STOCK EXCHANGE PRACTICES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

FIRST SESSION

ON

S.Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK EXCHANGES WITH RESPECT TO THE BUYING AND SELLING AND THE BORROWING AND LENDING OF LISTED SECURITIES

AND

S.Res. 56

(73d CONGRESS)

A RESOLUTION TO INVESTIGATE THE MATTER OF BANKING OPERATIONS AND PRACTICES, THE ISSUANCE AND SALE OF SECURITIES, AND THE TRADING THEREIN

PART 7

CHASE SECURITIES CORPORATION
(Continued)

NOVEMBER 14 TO NOVEMBER 22

Printed for the use of the Committee on Banking and Currency

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1934

175541

STOCK EXCHANGE PRACTICES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

FIRST SESSION

ON

S.Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK EXCHANGES WITH RESPECT TO THE BUYING AND SELLING AND THE BORROWING AND LENDING OF LISTED SECURITIES

AND

S.Res. 56

(73d CONGRESS)

A RESOLUTION TO INVESTIGATE THE MATTER OF BANKING OPERATIONS AND PRACTICES, THE ISSUANCE AND SALE OF SECURITIES, AND THE TRADING THEREIN

PART 7

CHASE SECURITIES CORPORATION
(Continued)

NOVEMBER 14 TO NOVEMBER 22

Printed for the use of the Committee on Banking and Currency

UNITED STATES
GOVERNMENT PRINTING OFFICE
175541 WASHINGTON : 1934

COMMITTEE ON BANKING AND CURRENCY

DUNCAN U. FLETCHER, Florida, *Chairman*

CARTER GLASS, Virginia
ROBERT F. WAGNER, New York
ALBEN W. BARKLEY, Kentucky
ROBERT J. BULKLEY, Ohio
THOMAS P. GORE, Oklahoma
EDWARD P. COSTIGAN, Colorado
ROBERT R. REYNOLDS, North Carolina
JAMES F. BYRNES, South Carolina
JOHN H. BANKHEAD, Alabama
WILLIAM GIBBS McADOO, California
ALVA B. ADAMS, Colorado

PETER NORBECK, South Dakota
PHILLIPS LEE GOLDSBOROUGH, Maryland
JOHN G. TOWNSEND, Jr., Delaware
FREDERIC C. WALCOTT, Connecticut
ROBERT D. CAREY, Wyoming
JAMES COUZENS, Michigan
FREDERICK STEIWER, Oregon
HAMILTON F. KEAN, New Jersey

William L. Hill, *Clerk*

R. H. Sparkman, *Acting Clerk*

Subcommittee on Stock Exchange Practices

DUNCAN U. FLETCHER, Florida, *Chairman*

CARTER GLASS, Virginia
ALBEN W. BARKLEY, Kentucky [1]
EDWARD P. COSTIGAN, Colorado [2]

PETER NORBECK, South Dakota [3]
JOHN G. TOWNSEND, Jr., Delaware
JAMES COUZENS, Michigan

[1] Alternate, Thomas P. Gore, Oklahoma.
[2] Alternate, Alva B. Adams, Colorado.
[3] Alternate, Phillips Lee Goldsborough, Maryland.

CONTENTS

EXHIBITS

(Italics indicate page on which exhibit was admitted into the record; roman type, exhibit printed)

(*) Not printed because of length, or for reasons given in text.

(*) Not printed because of length, or for reasons given in text.

STOCK EXCHANGE PRACTICES

TUESDAY, NOVEMBER 14, 1933

United States Senate,
Subcommittee of the Committee
on Banking and Currency,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment on Friday, November 10, 1933, in the caucus room of the Senate Office Building. Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Joseph B. Lynch, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern, and also William Dean Embree and A. Donald MacKinnon, of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation; Martin Conboy, counsel for Albert H. Wiggin; Millard F. Tompkins, counsel for Ruloff E. Cutten; G. T. Stanford, general counsel of the Sinclair Consolidated Oil Corporation.

The Chairman. The subcommittee will come to order, please. Mr. Pecora, who will you have first?

Mr. Pecora. Mr. Ruloff E. Cutten.

The Chairman. Mr. Cutten, please come forward, hold up your right hand, and be sworn: You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God.

Mr. Cutten. I do.

TESTIMONY OF RULOFF E. CUTTEN, NEW YORK CITY

Mr. Pecora. Mr. Cutten, will you give your full name and address?

Mr. Cutten. Ruloff E. Cutten, 61 Broadway, New York City.

Mr. Pecora. What is your business or profession?

Mr. Cutten. I am a broker.

Mr. Pecora. A stock broker?

Mr. Cutten. A stock broker.

Mr. Pecora. Are you a member of any firm?

Mr. Cutten. I am a member of E. F. Hutton & Co.

Mr. Pecora. Where is your office or place of business?

Mr. Cutten. 61 Broadway, New York City.

Mr. Pecora. That is, that is their office or place of business?

Mr. Cutten. Yes.

Mr. PECORA. Does that firm or any member thereof hold any membership or memberships on the New York Stock Exchange?

Mr. CUTTEN. We hold two memberships.

Mr. PECORA. Are you one of the floor members of the firm?

Mr. CUTTEN. I am one of the members of the New York Stock Exchange.

Senator GORE. When did you become a member of the New York Stock Exchange?

Mr. CUTTEN. In May of 1925.

Mr. PECORA. Mr. Cutten, do you recall a trading account or syndicate that was formed on or about October 25, 1928, to trade in the common stock of the Sinclair Consolidated Oil Corporation?

Mr. CUTTEN. I do.

Mr. PECORA. Did you have anything to do with the organization of that account or syndicate?

Mr. CUTTEN. The formation of the group, do you mean?

Mr. PECORA. Yes, sir.

Mr. CUTTEN. And the participants?

Mr. PECORA. And the participants.

Mr. CUTTEN. No, sir.

Mr. PECORA. By the way, let me ask you: As a member of the New York Stock Exchange are you one of its specialists?

Mr. CUTTEN. I am not.

Mr. PECORA. Have you ever been?

Mr. CUTTEN. I never have.

Mr. PECORA. Are you familiar with the terms and provisions of the agreement under which that trading account was formed?

Mr. CUTTEN. I think I am; yes, sir.

Mr. PECORA. Did you sign that agreement on behalf of Mr. Arthur W. Cutten?

Mr. CUTTEN. I did.

Mr. PECORA. Are you familiar also with another syndicate known as a purchasing syndicate, of which Arthur W. Cutten was a participant, that was formed on or about October 24, 1928, to purchase 1,130,000 shares of the common capital stock of the Sinclair Consolidated Oil Corporation from that corporation?

Mr. CUTTEN. I am.

Mr. PECORA. Did you have anything to do with that transaction?

Mr. CUTTEN. No, sir.

Mr. PECORA. What, if anything, did you have to do with the trading account or syndicate that was formed on October 25, 1928?

Mr. CUTTEN. I received some of the participants, helped to form the group. Are you referring to the million-share trading account?

Mr. PECORA. Yes.

Mr. CUTTEN. The secondary account?

Mr. PECORA. Yes.

Mr. CUTTEN. Yes, sir.

Mr. PECORA. You said you "received" some of the participants. What did you mean?

Mr. CUTTEN. I allotted some of the stock to various participants.

Mr. PECORA. Who invited those various participants, to whom you made allotments, to come into the account?

Mr. CUTTEN. I did.

Mr. PECORA. You were not a member of the account yourself, were you?

Mr. CUTTEN. No, sir.

Mr. PECORA. What authority had you to invite persons to become participants in that account?

Mr. CUTTEN. They wanted to spread the liability.

Mr. PECORA. When you say "they wanted to spread the liability", whom are you referring to?

Mr. CUTTEN. To the manager or the managers.

Mr. PECORA. Who was the manager, or who were the managers?

Mr. CUTTEN. Mr. Arthur W. Cutten was manager.

Mr. PECORA. Are you related to Mr. Arthur W. Cutten?

Mr. CUTTEN. I am his cousin.

Mr. PECORA. Where was Mr. Arthur W. Cutten's office or place of business at that time?

Mr. CUTTEN. No. 231 South La Salle Street.

Mr. PECORA. In Chicago?

Mr. CUTTEN. Yes.

Mr. PECORA. And your office or place of business was in New York City, being the office of E. F. Hutton & Co.?

Mr. CUTTEN. That is right, at 61 Broadway.

Mr. PECORA. Did you invite participants in the exercise of your own judgment or discretion, or did you do so in furtherance of instructions given to you by Mr. Arthur W. Cutten?

Mr. CUTTEN. I discussed them with him and with Blair & Co.

Mr. PECORA. What part did Blair & Co. have in the formation of the trading syndicate?

Mr. CUTTEN. To the extent of those that they invited in.

Mr. PECORA. Were they original participants? Were they members of the original group?

Mr. CUTTEN. They were. In other words, each of the original four invited some people into the trading account.

Mr. PECORA. Who were the original four?

Mr. CUTTEN. As I knew them they were Mr. Arthur W. Cutten, Mr. Harry F. Sinclair, Blair & Co., and the Chase.

Mr. PECORA. Chase Securities Corporation?

Mr. CUTTEN. Yes; Chase Securities.

Mr. PECORA. Did each have a 25-percent interest in the original syndicate?

Mr. CUTTEN. Well, that is the way it was referred to at first, until agreements were made up of three twelfths for three of them, and two twelfths for Chase Securities, and one twelfth for the Shermar.

Mr. PECORA. Now, there has been put in evidence here the agreement in the form of a letter addressed to Mr. Arthur W. Cutten by the Sinclair Consolidated Oil Corporation, setting forth the terms under which that corporation agreed to sell to Mr. Arthur W. Cutten and Mr. Arthur W. Cutten agreed to purchase from the corporation 1,130,000 shares of the capital stock of the corporation, for the price of $30 per share. Are you familiar with that agreement?

Mr. CUTTEN. I believe I am; yes, sir.

Mr. PECORA. When was that matter, that transaction, first discussed with you by anybody?

Mr. CUTTEN. In October of 1928.

Mr. PECORA. That is, at the time when the agreement was entered into?

Mr. CUTTEN. Before.

Mr. PECORA. How long before the date of the agreement itself, which was October 24?

Mr. CUTTEN. Perhaps 3 weeks, or perhaps 2 weeks.

Mr. PECORA. With whom did you discuss it then?

Mr. CUTTEN. With Mr. Harry Sinclair, Mr. Fred Bartlett, Mr. Arthur Cutton, and myself, we were present at the meeting.

Mr. PECORA. Where was that conference held for the purpose of that discussion? Was it held in New York City or in Chicago?

Mr. CUTTEN. In New York City.

Mr. PECORA. And at that time were the terms and conditions of the transaction, as eventually entered into on October 24, discussed by the parties?

Mr. CUTTEN. No, sir.

Mr. PECORA. What discussion was had at the outset?

Mr. CUTTEN. Just for the sale of of 1,130,000 shares of the stock, by Mr. Sinclair.

Mr. PECORA. What was said about it?

Mr. CUTTEN. Mr. Sinclair wished to sell that amount of stock at $30 a share for the company and wished to form a group to purchase the stock.

Mr. PECORA. What did you say?

Mr. CUTTEN. Mr. Sinclair wished to sell that amount of stock at $30 a share for the company, and he wished to form a group to purchase the stock.

Mr. PECORA. Did Mr. Sinclair say he wished to form a group to purchase the stock?

Mr. CUTTEN. No; but——

Mr. PECORA (continuing). Or did he ask your cousin, Mr. Arthur W. Cutten, to form such a group?

Mr. CUTTEN. He asked Mr. Arthur Cutten to form such a group, or wanted to know if he would be interested to head such a group.

Mr. PECORA. What was said by Mr. Sinclair, if anything, concerning the reason or reasons why he, on behalf of his corporation, wanted to sell 1,130,000 shares to a group to be formed?

Mr. CUTTEN. To raise additional working capital.

Mr. PECORA. For the corporation?

Mr. CUTTEN. For the corporation; yes, sir.

Mr. PECORA. Was there any discussion as to offering that stock first to the then stockholders of record of the corporation?

Mr. CUTTEN. I do not think so.

Mr. PECORA. Did anyone suggest that that should be done?

Mr. CUTTEN. I do not think so.

Mr. PECORA. Did Mr. Sinclair give any reason why he wanted the stock sold on private terms or at private sale rather than in the open market or to the stockholders of record?

Mr. CUTTEN. I don't think he did.

Mr. PECORA. Was that discussed in any way at all? Was the question raised by anyone as to why the stock was not being disposed of in that manner? That is, either by sale to the stockholders, by an offer to the stockholders of record, or in the open market, rather than at private sale?

Mr. CUTTEN. Well, I believe he felt that the stockholders would not subscribe for the stock at $30 a share, which at that time was two points higher than the market. The element of time always enters into that, because it takes 60 or 90 days before the company would know whether the stockholders would exercise their rights to subscribe to the stock. That is, you have to give the stockholders at least 30 days, have to take a record of those that are stockholders of the company, and then you send out warrants to them, and they have at least 30 days, and sometimes longer, to exercise their rights to subscribe to the stock. And I believe that the time element was too long in that particular case.

Mr. PECORA. Was that advanced as a reason by anyone at that conference why the offer of the stock was not made directly to the stockholders?

Mr. CUTTEN. I do not think so.

Mr. PECORA. What makes you say, then, that that was the reason why this stock was not disposed of by direct offer to the existing stockholders?

Mr. CUTTEN. That is only my personal reason, or——

Mr. PECORA (interposing). As a matter of fact, don't you know that the initial conferences with regard to the sale, or the proposition to sell 1,130,000 shares were held in August of 1928, according to testimony given before this subcommittee by Arthur W. Cutten?

Mr. CUTTEN. I know that they were held prior to the meeting I attended. But I did not know that this was discussed until I returned from Europe, in October.

Mr. PECORA. So the introduction of the subject was on the occasion of this conference that you are telling us about, which was held about 3 weeks prior to October 24?

Mr. CUTTEN. Exactly.

Mr. PECORA. Do you know what the market price for the stock then was on the New York Stock Exchange?

Mr. CUTTEN. Twenty-eight.

Mr. PECORA. Did you say 28?

Mr. CUTTEN. Yes, sir; 28 exactly on the day of the meeting, or 28¼.

Mr. PECORA. Did Mr. Sinclair indicate what the present need, if any, was for haste in disposing of 1,130,000 shares of stock?

Mr. CUTTEN. None whatsoever.

Mr. PECORA. What was said by any of those present at that conference that you attended early in October, concerning the value of the stock?

Mr. CUTTEN. I don't remember.

Mr. PECORA. Well, you do remember that the market quotation for the stock at that time was 28, and that Mr. Sinclair stated that the company would sell those 1,130,000 shares for $30 per share. So that there must have been something said about the question of the value of the stock.

Mr. CUTTEN. Well, if I recall it correctly, I believe Mr. Arthur Cutten thought it was too high.

Mr. PECORA. Yes.

Mr. CUTTEN. And Mr. Sinclair said——

Mr. PECORA (interposing). When he expressed himself to that effect, what did Mr. Sinclair say?

Mr. CUTTEN. He said he would not take less than $30 per share for the stock.

Mr. PECORA. Did he say anything which was by way of justification for the price of $30 per share for the stock?

Mr. CUTTEN. He may have mentioned the oil industry as a whole, and the increased earnings of the Consolidated Co.—the Sinclair Co., I mean.

Senator COUZENS. When that conference was going on, did you have any financial statement?

Mr. CUTTEN. Of the company, do you mean?

Senator COUZENS. Yes.

Mr. CUTTEN. Not while the conference was in session; no, sir.

Senator COUZENS. When did you first see a financial statement of the Sinclair Consolidated Oil Corporation?

Mr. CUTTEN. After the conference, do you mean?

Senator COUZENS. Yes.

Mr. CUTTEN. Immediately afterward.

Senator COUZENS. And what did it indicate the stock was worth, by analysis of the statement?

Mr. CUTTEN. I believe it showed a book value as of the end of 1927 of fifty-some dollars a share.

Senator COUZENS. And how did you account for this stock selling for 28 or 28¼ when the book value showed $50 plus per share?

Mr. CUTTEN. I cannot account for that, sir.

The CHAIRMAN. Did you form any independent judgment as to the real value of the stock, or did you just take Mr. Sinclair's arbitrary fixing of a value at $30 a share?

Mr. CUTTEN. No, sir. I had my statistical department, or I mean the statistical department of E. F. Hutton & Co., give me some figures on it. And I looked up Standard Statistics, Moody's, and various services that we have, and tried to form my own opinion, tried to form my own judgment.

Senator COUZENS. Have you here with you a statement as of the end of 1927 for the Sinclair Consolidated Oil Corporation, that you have just referred to?

Mr. CUTTEN. I believe we have.

Mr. TOMPKINS. I think we have, Senator.

Senator COUZENS. I should like to look at it, if you have it. And you need not wait for me, Mr. Pecora.

Mr. TOMPKINS. I will try to furnish it to you, Senator Couzens, as soon as I can find it here among my papers.

Senator COUZENS. All right.

Mr. PECORA. Mr. Cutten, were there any other conferences attended by you, held between this one that you have testified about, and October 24, 1928?

Mr. CUTTEN. There were.

Mr. PECORA. How many such other conferences did you attend in that period?

Mr. CUTTEN. Perhaps half a dozen.

Mr. PECORA. What was the substance of the conversation or discussion with relation to this transaction at those half dozen conferences?

Mr. CUTTEN. Still trying to get together on a price.

Mr. PECORA. Well, did Mr. Arthur W. Cutten remonstrate against a price of $30 per share which was asked?

Mr. CUTTEN. Only, as I recall, at the original conference that I attended.

Mr. PECORA. Well, you said there were about half a dozen other conferences. Now, in those about half a dozen other conferences, the discussion had to do with the price?

Mr. CUTTEN. And who would come in the group if the price was determined; if it was determined to accept the offer of $30 per share.

Mr. PECORA. Were there any negotiations in those conferences between Arthur W. Cutten on the one hand and Harry F. Sinclair on the other, on the matter of price?

Mr. CUTTEN. Not that I recall. I believe Mr. Cutten was in Chicago.

Mr. PECORA. Well, did he attend those half dozen other conferences?

Mr. CUTTEN. No, sir.

Mr. PECORA. Did you attend them in his behalf?

Mr. CUTTEN. I did.

Mr. PECORA. And represented his views at those conferences?

Mr. CUTTEN. I did.

Mr. PECORA. Did you have any advices from Mr. Arthur W. Cutten that governed you in those conferences with regard to the price he was willing to pay?

Mr. CUTTEN. I believe I did.

Mr. PECORA. And what was the nature of them?

Mr. CUTTEN. If I recall, on the various telephone conversations that I made to him, as I would do each and every day, he still believed that the price was too high.

Mr. PECORA. Well, what representations did you make along those lines to Mr. Sinclair at those half dozen other conferences?

Mr. CUTTEN. I told him so.

Mr. PECORA. Well, what representations did he make to justify the $30 price?

Mr. CUTTEN. I believe all he said was that that was the lowest price he would take for the shares.

Mr. PECORA. And finally you received instructions from your cousin, Arthur W. Cutten, to close the transaction at $30 per share?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Well, now, in those half dozen other conferences that you have referred to, what was said concerning the formation of a purchasing group?

Mr. CUTTEN. Mr. Sinclair said that he would take a certain participation, and Blair & Co. said they would take a certain participation, and Chase Securities said they would take a certain participation.

Mr. PECORA. Who represented Chase Securities Corporation in those conferences?

Mr. CUTTEN. Mr. Callahan.

Mr. PECORA. He was then president or vice president of it?

Mr. CUTTEN. I believe vice president.

Mr. PECORA. He is now dead, isn't he?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. And who represented Blair & Co. in those conferences?
Mr. CUTTEN. Mr. Elisha Walker.
Mr. PECORA. He was the president of Blair & Co.?
Mr. CUTTEN. He was the president.
Mr. PECORA. And Mr. Sinclair represented himself?
Mr. CUTTEN. Yes, sir.
Mr. PECORA. Were there any attorneys present at those conferences?
Mr. CUTTEN. Perhaps at the final one, where the syndicate agreement was drawn up. I doubt if there were before that.
Mr. PECORA. Do you know who invited Chase Securities Corporation to become a participant in this purchasing group?
Mr. CUTTEN. I do not.
Mr. PECORA. Do you know who invited Blair & Co. to become a participant?
Mr. CUTTEN. No; I do not.
Mr. PECORA. Do you know upon whose suggestion they were made participants?
Mr. CUTTEN. No; I do not.
Mr. PECORA. Do you recall that in your testimony here you said that at the first conference you think you had with Mr. Sinclair early in October, at which your cousin was present also, Mr. Sinclair said something to the effect that he would assist or would form a purchasing group, and that he wanted Mr. Arthur W. Cutten to be a participant? Dou you recall that statement?
Mr. CUTTEN. Yes, sir.
Mr. PECORA. At that time did Mr. Sinclair indicate whom he would invite to become members of the purchasing group?
Mr. CUTTEN. I do not recall that he did; no, sir.
Mr. PECORA. Well, when for the first time did you hear of the Chase Securities Corporation becoming a member of the purchasing group?
Mr. CUTTEN. At the first meeting that I attended when they were present, when the officer of the corporation was present.
Mr. PECORA. Is that true also with respect to Blair & Co.'s participation?
Mr. CUTTEN. It was.
Mr. PECORA. Now, what was said concerning the terms of payment that was to be made for the 1,130,000 shares by this purchasing group?
Mr. CUTTEN. The purchasing group, as I understand it, were to have 30 days' grace, and then upon written notice from the treasurer of the Sinclair Consolidated Oil Corporation, they were to have 30 days more before they had to take up any of the shares, and from November 24 they would pay the Sinclair Consolidated Oil Corporation 6 percent interest on the amount that they had not taken up.
Mr. PECORA. But they were not to make any payments for another 30 days thereafter?
Mr. CUTTEN. They were not to make any payment from October 24 to November 24.
Senator COUZENS. And thereafter were to pay 6 percent?
Mr. CUTTEN. And from then on were to pay 6 percent interest on the debit balance.

The CHAIRMAN. What was the course of the market from the 24th of October on?

Mr. CUTTEN. Up.

Mr. PECORA. Do you know why there was a delay from the first conference that you attended early in October until October 24 before your cousin made a firm commitment to buy the 1,130,000 shares at $30 per share?

Mr. CUTTEN. Well, it was under discussion, as I say, in any number of conferences which I undoubtedly attended, at least half a dozen.

Mr. PECORA. But there was no firm commitment made to buy until October 24, 1928, was there?

Mr. CUTTEN. Not until the papers were signed.

Mr. PECORA. Well, that was October 24, 1928; is that right?

Mr. CUTTEN. Yes; but I think it was understood that the purchase would be made, perhaps 2 or 3, or even 4 days prior to that. The papers had to be drawn up.

Mr. PECORA. Well, 2 or 3 or 4 days prior the parties agreed informally?

Mr. CUTTEN. Informally, correct.

Mr. PECORA. But the firm commitment was not made until October 24?

Mr. CUTTEN. That is correct.

Mr. PECORA. Why was there a delay of about 3 weeks before making the firm commitment to buy at $30 a share?

Mr. CUTTEN. I am sure I don't know.

Mr. PECORA. Now, meanwhile, during that interval of 3 weeks' time, what was the course of the market with regard to that stock?

Mr. CUTTEN. I believe it fluctuated from 28 to about 31 and a fraction, or 32, and then back to 29 and up to 30.

Mr. PECORA. Do you know what it was on October 24?

Mr. CUTTEN. The closing on October 24 was 35⅝.

Mr. PECORA. What was it 4 days before that?

Mr. CUTTEN. Thirty.

Mr. PECORA. Now, when that agreement of October 24 was entered into by the Sinclair Consolidated Oil Corporation, on the one hand, and Arthur W. Cutten, on the other, the form of the commitment was for Arthur W. Cutten individually to buy the 1,130,000 shares for $30 a share, wasn't it?

Mr. CUTTEN. That is right.

Mr. PECORA. But it was clearly understood among the participants at conferences that had been held prior to October 24, that Mr. Arthur W. Cutten was making that commitment actually in behalf of a purchasing group that was composed of himself, Harry F. Sinclair, Blair & Co., and Chase Securities Corporation?

Mr. CUTTEN. Quite right.

Mr. PECORA. Do you know why the agreement was made by the Sinclair Consolidated Oil Corporation with Mr. Cutten individually and not with all the four members of that purchasing group?

Mr. CUTTEN. I do not.

Mr. PECORA. What discussion was had at any of the conferences prior to the making of that agreement on October 24, that led to the

decision that the purchase agreement was to be made only with Mr. Arthur W. Cutten as the purchaser?

Mr. CUTTEN. None that I can remember.

Mr. PECORA. Now, you said before that you thought attorneys were present at the time when the agreement was actually entered into on October 24.

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Do you recall who those attorneys were, and whom they represented respectively?

Mr. CUTTEN. I think Mr. Moore was present.

Mr. PECORA. Representing whom?

Mr. CUTTEN. Representing the firm of Cravath and——

Mr. PECORA (interposing). He represented the firm of Cravath, de Gersdorff, Swaine & Wood?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Whom did they represent in the transaction?

Mr. CUTTEN. I do not know whose counsel they were.

Mr. PECORA. Did they represent Arthur W. Cutten?

Mr. CUTTEN. They did not.

Mr. PECORA. Did they represent Mr. Sinclair?

Mr. CUTTEN. I could not tell you.

Mr. PECORA. Did they represent Blair & Co.?

Mr. CUTTEN. I do not know.

Mr. PECORA. Did they represent Chase Securities Corporation?

Mr. CUTTEN. I do not know.

Mr. PECORA. Who prepared the agreement of October 24, 1928, if you know?

Mr. CUTTEN. I do not know.

Mr. PECORA. Were you present when it was signed?

Mr. CUTTEN. I was.

Mr. PECORA. Where was it signed?

Mr. CUTTEN. I believe in Mr. Sinclair's office.

Mr. PECORA. In New York?

Mr. CUTTEN. In New York; yes, sir.

Mr. PECORA. That was the office of the Sinclair Consolidated Oil Corporation, was it?

Mr. CUTTEN. That was what I meant, yes.

Mr. PECORA. Had you had any transactions prior to that date with the Sinclair Consolidated Oil Corporation?

Mr. CUTTEN. I had not.

Mr. PECORA. Or with Mr. Sinclair individually?

Mr. CUTTEN. Transactions?

Mr. PECORA. Any kind of business transaction, yes.

Mr. CUTTEN. I had not.

Mr. PECORA. Were you an officer or director of the Sinclair Consolidated Oil Corporation at that time?

Mr. CUTTEN. I was not.

Mr. PECORA. Was your cousin, Arthur W. Cutten?

Mr. CUTTEN. He was not.

Mr. PECORA. You knew Mr. Sinclair was chairman of the board, didn't you?

Mr. CUTTEN. I did.

Mr. Pecora. That fact developed and was made known to the participants at those conferences, wasn't it?

Mr. Cutten. It was.

Mr. Pecora. Do you know whether a meeting of the board of directors of the Sinclair Consolidated Oil Corporation was held on that same day, namely, October 24, 1928, at the office of the corporation?

Mr. Cutten. I believe it was.

Mr. Pecora. Were you in the office, although not present at the meeting of the board, at a time when that meeting was held?

Mr. Cutten. I do not think so.

Mr. Pecora. Well, had Mr. Sinclair said anything to you about his ability to have that agreement approved by the board of directors, I mean the agreement of October 24?

Mr. Cutten. He had not.

Mr. Pecora. Had anything been said about obtaining the approval of the board of directors of the Sinclair Consolidated Oil Corporation to the transaction?

Mr. Cutten. Not that I recall.

Mr. Pecora. Mr. Cutten, here was the corporation itself, making this agreement to sell to Arthur W. Cutten these 1,130,000 shares at $30 a share. You were attending half a dozen or more conferences relating to that transaction before the transaction was consummated by the agreement of October 24. Do you mean to say that at no time was anything said by anybody in those conferences concerning the obtaining of the approval, or ratification of the transaction, by the board of directors of the oil corporation?

Mr. Cutten. Not that I know of.

Mr. Pecora. Nobody never discussed that at all?

Mr. Cutten. Not that I know of.

Mr. Pecora. Did everyone take it for granted, then, that that approval would be forthcoming without any question?

Mr. Cutten. No; it may have been disapproved.

Mr. Pecora. What was said about it at any time in these conferences?

Mr. Cutten. I do not not believe it was ever mentioned.

Mr. Pecora. You mean to say that your cousin and the other participants who, it was understood before October 24, were to become members of the purchasing group, went ahead and entered into all these negotiations, culminating in the making of a firm agreement, without discussing the question of whether or not the corporation's board of directors would approve or ratify the transaction?

Mr. Cutten. I believe that is right.

Mr. Pecora. Then, it must have been assumed by everybody that the corporation's board would ratify it. That is a fair inference, is it not?

Mr. Cutten. Yes, sir.

Mr. Pecora. Without a word being said by anybody about it.

Mr. Cutten. Well, I do not recall that anything was said by anyone.

Mr. Pecora. Did you, as a member of the stock exchange, execute any orders relating to the buying or selling of the common stock

of the Sinclair Consolidated Oil Corporation between the time of the first conference which you attended early in October, and October 24?

Mr. CUTTEN. I may have, for the customers of my firm.

Mr. PECORA. Do you recall whether the public trading in that stock was at all active prior to the time that you had this first conference in the early part of October?

Mr. CUTTEN. I believe it was.

Mr. PECORA. Do you recall whether it became more active after you had that first conference?

Mr. CUTTEN. I believe it did. I would like to consult the records as to the volume.

Senator GORE. I wish you would find the fluctuations on October 24 while you are looking at it.

Mr. TOMPKINS. I have a chart here, Senator, that Mr. Pecora might like to put in the record, of the prices of Sinclair oil from October 1 down to the time the syndicate was closed, and also the prices of five other representative oil stocks, and it is surprising to see how they more or less moved together.

Mr. PECORA. That is generally true, is it not, in an industry?

Mr. TOMPKINS. Yes.

Mr. PECORA. When the stock of one particular concern in an industry moves with any degree of activity the stock of similar corporations in the same industry moves in sympathy with it.

Mr. TOMPKINS. That is generally so.

Mr. PECORA. So that any excitation of trading in one of those securities would have its reflection in the trading in similar securities, would it not?

Mr. TOMPKINS. It might have; yes, Mr. Pecora.

Mr. PECORA. You know that is a fact, do you not, Mr. Cutten?

Mr. CUTTEN. That is so. On October 16 there were 128.000 shares of Sinclair traded in. On the 17th there were 113,000 shares traded in. Then it fell to 39.000 shares, 31,000, 25,000, and 33.000. On October 23 there were 136,000. On October 24, from a low of 32 to a high of $35\frac{7}{8}$, there were 500.700 shares traded in.

Mr. PECORA. Do you recall that day's transactions?

Mr. CUTTEN. I do not recall it; no, sir.

Mr. PECORA. Do you know of any other day prior to that time when the trading in that common stock reached as high as 500,000 shares in a day's time?

Mr. CUTTEN. It may have. I will have to look back over the records.

Senator GORE. How much was the next day?

Mr. CUTTEN. The next day there were 493,000 shares traded in. The following day 178,000 shares traded in; then 70.000 shares traded in.

Mr. PECORA. I want you to concentrate your recollection on October 24, 1928, on the occasion of the signing of the agreement between the Sinclair company and Arthur W. Cutten. You say that took place at the office of the Sinclair company in New York?

Mr. CUTTEN. To the best of my knowledge it did.

Mr. PECORA. You were present?

Mr. CUTTEN. I was present.

Mr. PECORA. How long did the conference last that day before the agreement was actually signed?

Mr. CUTTEN. I could not tell.

Mr. PECORA. Was it in the forenoon or in the afternoon that it was signed?

Mr. CUTTEN. To the best of my recollection it was in the afternoon, after 3 o'clock.

Mr. PECORA. After the market closed, or before?

Mr. CUTTEN. I do not know positively. I could not say.

Mr. PECORA. Was Mr. Sinclair in and out of the room where the conference was being held, at which the agreement was actually signed?

Mr. CUTTEN. Not that I remember; no.

Mr. PECORA. Was he present throughout the conference?

Mr. CUTTEN. I believe he was.

Mr. PECORA. Do you recall, at that conference, anything being said by anyone whomsoever about the board of directors of the oil corporation ratifying or approving the agreement?

Mr. CUTTEN. I do not think so.

Mr. PECORA. When was delivery of the 1,130,000 shares of the stock made by the oil corporation?

Mr. CUTTEN. Five hundred thousand shares December 24, for $15,000,000; 630,000 shares on December 31, for $18,900,000.

Mr. PECORA. Five hundred thousand shares on what date, did you say—December 24?

Mr. CUTTEN. The 27th, it shows here. I thought it was the 24th—for $15,000,000. On December 31, 630,000 shares for $18,900,000.

Mr. PECORA. Meanwhile the trading syndicate that you referred to in the early part of your testimony as having been formed at about the same time, or the following day, had some very active market operations in the stock, had it not?

Mr. CUTTEN. Up to and including the 31st of December, do you mean?

Mr. PECORA. Up to the 27th of December, the date when delivery was first made of any of the shares.

Mr. CUTTEN (after conferring with an associate). It appears as though they purchased two hundred thousand odd shares, and sold two hundred thousand odd shares.

Mr. PECORA. That is, the trading syndicate?

Mr. CUTTEN. The trading syndicate.

Mr. PECORA. Between October 25 and December 27?

Mr. CUTTEN. Between November 5 and December 21.

Mr. PECORA. Did not the trading syndicate have any trades in the stock prior to November 5?

Mr. CUTTEN. The trading account did not. The initial transactions took place on November 5, 50,900 shares purchased.

Mr. PECORA. When was there for the first time, to your knowledge, any discussion about the formation of a trading account?

Mr. CUTTEN. Simultaneously with the formation of the syndicate account.

Mr. PECORA. That is, at all the times during which negotiations or conferences were being held with relation to the purchase from the

oil corporation of the 1,130,000 shares, discussion was also had by the parties to those conferences about the formation of the trading account?

Mr. CUTTEN. No, sir.

Mr. PECORA. When was the first discussion or conference about the formation of a trading account?

Mr. CUTTEN. When the decision was reached to buy the 1,130,000 shares.

Mr. PECORA. You said that decision was informally reached about 3 or 4 days prior to October 24.

Mr. CUTTEN. Yes.

Mr. PECORA. Who took part in the conferences with respect to the formation of the trading account?

Mr. CUTTEN. I believe the same that were at the other conferences.

Mr. PECORA. That is, you and Mr. Sinclair——

Mr. CUTTEN. Yes.

Mr. PECORA. The representatives of Blair & Co.?

Mr. CUTTEN. Yes.

Mr. PECORA. The representatives of the Chase Securities Corporation?

Mr. CUTTEN. Yes.

Mr. PECORA. Anyone else, or the representatives of anyone else?

Mr. CUTTEN. No.

Mr. PECORA. When did the Shermar Corporation come into the negotiations, either in connection with the formation of the purchasing group, or the formation of the trading account?

Mr. CUTTEN. I do not remember that.

Mr. PECORA. Who represented the Shermar Corporation at any of those conferences?

Mr. CUTTEN. I do not recall that anyone did.

Mr. PECORA. What is that?

Mr. CUTTEN. I do not recall that anyone did.

Mr. PECORA. Who indicated that the Shermar Corporation would become a participant in the purchasing group? Was it Mr. Callahan?

Mr. CUTTEN. I could not swear to it.

Mr. PECORA. But at no time was there a representative of the Shermar Corporation in any of the conferences?

Mr. CUTTEN. Not to the best of my knowledge and belief.

Mr. PECORA. Did you know what kind of corporation the Shermar Corporation was at that time?

Mr. CUTTEN. I had an idea; yes, sir.

Mr. PECORA. What was your idea?

Mr. CUTTEN. That it was Mr. Wiggin's holding company.

Mr. PECORA. Was it something more than an idea that you had along those lines?

Mr. CUTTEN. No, sir.

Mr. PECORA. Had you heard of it prior to these conferences?

Mr. CUTTEN. Probably so.

Mr. PECORA. And had heard of it as a private company belonging to Mr. Wiggin?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. You had never had any business transactions with it before, had you?

Mr. CUTTEN. No, sir.

Mr. PECORA. How do you account for the fact, Mr. Cutten, that through all these conferences relating to the formation of the purchasing group, no one was present representing or speaking for the Shermar Corporation.

Mr. CUTTEN. I cannot account for that.

Mr. PECORA. Who first indicated that the Shermar Corporation was going to be a participant in the purchasing group?

Mr. CUTTEN. I do not recall who it was that first indicated it.

Mr. PECORA. Then, it became a participant without any representative attending any of the conferences which led to the formation of the purchasing group, so far as you know?

Mr. CUTTEN. So far as I know, yes, sir.

Mr. PECORA. And is the same true with regard to the formation of the trading account?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Who indicated, at these conferences, the extent of the participation that the Shermar Corporation would take in the purchasing group?

Mr. CUTTEN. I do not know that anyone did, sir.

Mr. PECORA. Now, at any time up to the 27th of December 1928, when the first delivery of any of this stock was made to the purchasing group—the delivery, you said, amounting to 500,000 shares, for $15,000,000—was anything said about how that purchase was to be financed?

Mr. CUTTEN. No, sir.

Mr. PECORA. Well, when the $15,000,000 was paid on December 27, 1928, do you know who paid it?

Mr. CUTTEN. E. F. Hutton & Co., my firm.

Mr. PECORA. From whom did E. F. Hutton & Co. obtain the money with which to make such payment?

Mr. CUTTEN. From the syndicate account.

Mr. PECORA. Do you know where the syndicate account got it?

Mr. CUTTEN. The syndicate account at that time had sold, on balance, I believe, a couple of hundred thousand shares of stock, about 200,000 shares of stock on balance, which represented a profit on the 200,000 shares that had been sold.

Mr. PECORA. Of how much?

Mr. CUTTEN. What do you mean, "of how much"?

Mr. PECORA. Which represented a profit of how much?

Mr. CUTTEN. On the 200,000 shares that were sold.

Mr. PECORA. How much profit was realized on the sale of those 200,000 shares?

Mr. CUTTEN. Perhaps a little less than $2,000,000.

Mr. PECORA. That is about a 10-point profit.

Mr. CUTTEN. About a 10-point profit; perhaps less.

Mr. PECORA. That profit had been realized by sales in the open market through the exchange?

Mr. CUTTEN. The 200,000 shares of stock, and the other 300,000 shares that were received in—the whole 500,000 shares were received

at 30, so there was really a 25 percent margin on the balance of the stock that the syndicate was long. The participants of the original syndicate did not have to be called upon for margin to finance the transaction for that reason.

Mr. PECORA. Was that in accordance with the original terms under which the sale of the 1,130,000 shares was made to Arthur W. Cutten?

Mr. CUTTEN. The receiving in of the stock in accordance with the terms?

Mr. PECORA. Payment of the stock in that fashion.

Mr. CUTTEN. Yes. We paid for the stock on the 27th, and paid them interest at 6 percent from the 24th of November up to and including the 27th of December.

Mr. PECORA. Meanwhile, where did the syndicate get the 200,000 shares from which it had sold?

Mr. CUTTEN. Borrowed it.

Mr. PECORA. From whom?

Mr. CUTTEN. Various brokers.

Mr. PECORA. Then it was selling short.

Mr. CUTTEN. They were; to make delivery the following day to people who had purchased the shares from them.

Mr. PECORA. Do you know why it was done in that fashion?

Mr. CUTTEN. I do not.

Mr. PECORA. Now, with regard to the formation of the trading account——

Senator GORE. May I ask a question right there?

Mr. PECORA. Certainly.

Senator GORE. This syndicate agreement was signed on October 24, 1928; is that right?

Mr. CUTTEN. That is correct, sir.

Senator GORE. And it involved 1,130,000 shares?

Mr. CUTTEN. That is correct, sir.

Senator GORE. The price was $30?

Mr. CUTTEN. That is correct.

Senator GORE. The stock opened that day at 32; is that right?

Mr. CUTTEN. That is correct.

Senator GORE. It closed that afternoon at 35¾, did it not?

Mr. CUTTEN. That is right, or 35⅝.

Senator GORE. The value of that stock on the market at the close that day, on 1,130,000 shares, was $6,000,000 more than they agreed to pay for it that day, was it not, stipulated in the contract signed that day to be paid?

Mr. CUTTEN. Yes, sir.

Senator GORE. That was a profit for each of the four participants of $1,500,000 on the day the transaction was consummated.

Mr. CUTTEN. Based upon the closing price; yes, sir. But probably in the forenoon the directors had agreed to sell the stock. I believe the directors' meetings were always held in the morning, at 11 or 11:30 in the morning. There was no telling whether the stock would close at 35⅝ that night, at 3 o'clock, or whether it would close at 29⅝.

Senator GORE. I understand that. They had good luck.

Mr. PECORA. You say probably the directors' meeting of the Sinclair Consolidated Oil Corporation was held in the forenoon.

Mr. CUTTEN. That is a matter of record, sir. You can find out.

Mr. PECORA. You just made the observation yourself, in answer to Senator Gore's last question, that probably the board of directors' meeting was held at 11 o'clock that morning.

Mr. CUTTEN. Yes, sir.

Senator COUZENS. You had previously testified that you thought it was concluded after the market had closed on that day.

Mr. CUTTEN. I meant the signing of the agreement.

Mr. PECORA. No; I asked you at that time about the meeting of the board of directors.

Mr. CUTTEN. I did not understand your question. I am sorry.

Mr. PECORA. I asked you also at that time whether anything at all was said at the conference at which the agreement of October 24 was signed, about any ratification by the board of directors of the oil corporation, and you said nothing was said.

Mr. CUTTEN. I said I did not recall.

Mr. PECORA. Or that you could not recall. What was the opening price on October 25, 1928?

Mr. CUTTEN. October 25? I do not know. I haven't it here. I have the high and the low, and the close.

Mr. PECORA. What was the range on October 25?

Mr. CUTTEN. 35½ low, 37¼ high, 36¾ close.

Mr. PECORA. How many shares were traded in that day, October 25?

Mr. CUTTEN. 493,200.

Mr. PECORA. That compares with trading of upwards of 500,000 shares the preceding day.

Mr. CUTTEN. That is correct.

Mr. PECORA. What was said concerning the purposes for which this trading account was to be formed, at the time it was first discussed?

Mr. CUTTEN. It was to help maintain a market. If——

Mr. PECORA. What do you understand by that term?

Mr. CUTTEN. To be able to purchase shares when necessary if the market should start to decline. In other words, if the syndicate account had been unable to dispose of any shares in the open market, the original agreement was so written that the syndicate account could not have purchased 100 shares of stock. They were limited to a commitment of 1,130,000 shares of stock, which they had made a firm purchase on.

Senator GORE. How many shares were outstanding at that time?

Mr. CUTTEN. Four million some hundred thousand.

Senator GORE. And they were handling about a fourth of all?

Mr. CUTTEN. That is right.

The CHAIRMAN. That is the common stock?

Mr. CUTTEN. That is the common stock, Senator; yes, sir.

Mr. PECORA. Was it not understood by those who caused the trading account to be formed that one of the purposes of the formation of the trading account was, as you put it, to maintain the market and in order to enable the purchasing group to sell to the public at a profit the 1,130,000 shares which they had agreed to buy at $30 per share?

Mr. CUTTEN. No, sir.

Senator GORE. It was not to lift the price above the purchase price, but to keep it from falling below it. Was that the idea?

Mr. CUTTEN. No, sir; not to keep it from falling below it.

Senator GORE. You said to maintain a market.

Mr. CUTTEN. To maintain a market. They would have purchased it on a scale down, as the market receded, just to maintain an orderly market.

Mr. PECORA. Had the market been disorderly prior to October 24?

Mr. CUTTEN. No, sir.

Mr. PECORA. What occasion was there to believe that the trading syndicate or trading account was necessary in order to maintain an orderly market, if there had been no disorderly market prior to October 24?

Mr. CUTTEN. The only way I can answer that is that such groups usually have buying power enough to maintain a market after such syndicates are formed.

Mr. PECORA. That is, after the formation of purchasing syndicates it is usual for them to cause to be formed a trading account or syndicate to maintain the market. That is the usual procedure, is it?

Mr. CUTTEN. If the original syndicate is not formed for a greater amount of shares than they contract for privately, yes, sir; I believe that a secondary account is formed.

Mr. PECORA. And that is a very frequent occurrence, is it not?

Mr. CUTTEN. I have no other knowledge than this, sir.

Mr. PECORA. That is to say, these trading accounts as a rule go hand in hand with purchasing groups, do they?

Mr. CUTTEN. Yes, sir; to the extent that they try to maintain a market with the syndicate.

Mr. PECORA. Now, this purchasing group had no intention of holding on to this block of stock, did it?

Mr. CUTTEN. The original purchasers?

Mr. PECORA. Yes. I mean the purchasing group that was eventually composed of Arthur Cutten, Harry Sinclair, Blair & Co., the Chase Securities Corporation, and the Shermar Corporation.

Mr. CUTTEN. Not if they could remarket it at a profit; no, sir.

Mr. PECORA. And that was their purpose and intent, was it not, to remarket it at a profit?

Mr. CUTTEN. Yes.

Mr. PECORA. In other words, this purchasing group did not buy the stock with a view of holding on to it for any long period of time as an investment?

Mr. CUTTEN. No, sir; not unless they were forced to do so by market conditions.

Mr. PECORA. And the trading account was formed in order that they might not be forced to do so by market conditions, was it not?

Mr. CUTTEN. No, sir; I cannot agree with you on that.

Mr. PECORA. Do you disagree with me on that?

Mr. CUTTEN. That the trading account was formed primarily to enable the syndicate account to dispose of their shares?

Mr. PECORA. At a profit; yes.

Mr. CUTTEN. At a profit.

Senator COUZENS. Do you agree with that?

Mr. CUTTEN. No, sir; I do not agree with that.

Mr. PECORA. Do you disagree with that?

Mr. CUTTEN. I disagree with it.

Mr. PECORA. Entirely?

Mr. CUTTEN. You are putting the question, of course, in a different way, differently than I have ever thought of the trading account before, as to the syndicate. As I say, the group had no purchasing power whatsoever when the original syndicate was formed, and, the second day after the contract was signed, had the stock gone down, had there been a break in the general market, had the original syndicate been unable to dispose of 100 shares of stock, they could not have bought 100 shares of stock, regardless of where the market went. If the market went to $20 a share, they could not have purchased 100 shares of stock.

Senator GORE. Why did they enter into a syndicate of that sort, and limit themselves in that way? There was no necessity for such limitation.

Mr. CUTTEN. No, sir.

Senator GORE. Was it not to create an occasion for this other concern?

Mr. CUTTEN. Will you repeat that, please?

Senator GORE. In other words, to have two concerns operating, so that they could buy and sell to each other if they saw fit.

Mr. CUTTEN. Both of them could have been one, Senator.

Senator GORE. Yes.

Mr. CUTTEN. Had the original syndicate been drawn for 1,500,000 shares, or 2,000,000 shares of stock, and had only purchased privately 1,130,000 shares of stock, then they would have been able to make purchases to maintain the market had the market started to recede.

Senator GORE. And there might have been the situation of buying and selling the same day?

Mr. CUTTEN. You mean as between the two accounts?

Senator GORE. No; the same concern or syndicate could buy and sell the same day, if they had reserved that power, but that would have shown up in a rather worse light than to have the syndicate limited in the amount it could buy and sell, and to have another concern owned and operated by the same people, operating at the other end of it, if necessary, or on the other side.

Mr. CUTTEN. No, sir; I do not believe so, for this reason that the two accounts could be combined. The trading account and the syndicate could have been combined.

Senator GORE. Here is what I mean. The syndicate, we will say, sold 100,000 shares one day.

Mr. CUTTEN. Yes, sir.

Senator GORE. And the trading concern bought 100,000 shares the same day. That would not look quite as bad as for the syndicate to sell 100,000 and buy 100,000 the same day itself. I do not know that there would be any difference in effect. The books would look a little worse in an investigation like this, if possible.

Senator COUZENS. That is not possible.

Mr. CUTTEN. Both of these accounts can be put together. You can consider them as one account, and the syndicate account never sold to the trading account, nor did the trading account ever sell to the

syndicate account, except on the very last day, when the syndicate account sold——

Senator GORE (interposing). Well, of course, that would not make any difference, Mr. Cutten, whether the syndicate when it sold the stock sold it to them. It would not make any difference whether the stock it sold was actually bought by the trading concern or not. If the syndicate sold to John Doe and the trading account bought from Rochard Roe the same amount, it would be the same thing as if the syndicate had sold to the trading concern, would it not, so far as the effect or reaction on the market is concerned? It would be the same thing, would it not?

Mr. CUTTEN. The same effect on the market?

Senator GORE. Yes.

Mr. CUTTEN. As though they traded between themselves?

Senator GORE. Yes.

Mr. CUTTEN. The syndicate to the trading account?

Senator GORE. Yes, exactly; a sale to sale and a purchase to purchase, no matter who the parties are, and they would work in concert?

Senator COUZENS. And undoubtedly did, according to the records that we have.

Mr. CUTTEN. Well, that is wrong, Senator. They never did sell.

Senator COUZENS. The record was placed here last week indicating perfectly clear to anybody that had any imagination at all that they were wash sales, because the amounts were so balanced that no one could conceive otherwise.

Mr. CUTTEN. Senator, there was never a wash sale made in either one of these accounts. There has never been a wash sale in anything that I ever had anything to do with or my firm ever had anything to do with.

Senator GORE. Well, not in the strict sense or strict definition of the term, but would it not be the same thing? You take in the instance Senator Couzens referred to. The syndicate sold a thousand, say, in 1 day—it was approximately that?

Mr. CUTTEN. Yes.

Senator GORE. The trading concern bought fifty-odd thousand?

Mr. CUTTEN. Yes, sir.

Senator GORE. Now, did these two concerns exercise independent judgment and act on their judgment? That is, the syndicate thought it was a good time to sell and the trading concern thought it was a good time to buy, and the people who were manipulating the two concerns were exactly the same people forming two judgments in the opposite directions at the same moment?

Mr. CUTTEN. That is just about it, Senator, because the syndicate sold on the scale-up and the purchasing account bought on the way down.

Senator GORE. If the syndicate then had reserved the power to do both, it would have been buying and selling at the same moment, would it not?

Mr. CUTTEN. Not on the same moment; no sir.

Senator GORE. Well, approximately?

Mr. CUTTEN. Yes, approximately.

Senator GORE. If it had done that, that would have been a wash sale, would it not?

Mr. CUTTEN. No, sir; not unless they bought and sold——

Senator GORE (interposing). Well, in substance—or a match sale, whatever you call it?

Mr. CUTTEN. No, sir; it would not. For instance, in maintaining a market, Senator, if I should bid 41¼ for a hundred shares of stock and offer a hundred shares of stock at 41½, a broker may come to the Sinclair post and sell me a hundred at 41¼, and another broker may walk up and buy two or three from me at 41½. That is what I mean in maintaining a market. I always tried to maintain a market where the bidder announced quotations of a quarter of 1 percent apart, so there would not be wide fluctuations between sales.

Senator GORE. Your idea is that a wash sale or a match sale involves exactly the same quotations or same price?

Mr. CUTTEN. It has to be. That is a wash sale—no change of ownership, a fictitious price printed on the New York Stock Exchange to influence the price of a security.

Now, on that November 5 that you refer to, Senator, of the hundred thousand shares of stock sold for one account and 50,000 shares purchased for the other, that appears as though there is 150,000 shares of that stock traded out of the total volume of 210,000 shares of stock.

Mr. PECORA. One moment, Mr. Cutten. Have you given all the day's trades on that November 5?

Mr. CUTTEN. No; I am speaking of that one particular day, Mr. Pecora.

Mr. PECORA. I am speaking of that one particular day, too.

Senator GORE. The total sales on that day aggregated how much?

Mr. CUTTEN. Two hundred and ten thousand shares of stock.

Senator GORE. Have you the figures there at which the syndicate sold that day and at which the trading concern bought?

Mr. CUTTEN. Yes, sir. I wanted to bring this out, Senator, that when this syndicate account sold a hundred thousand six hundred shares of stock and the Sinclair trading account purchased 50,900 shares of stock, instead of that appearing to you gentlemen as though that was one hundred and fifty-some thousand shares of stock traded in out of the total of 210,000 shares of stock it really was this—these figures are taken from our ledger date which happens to be November 5, which was a Monday. The ledger date is the date of trades made on Friday or Saturday, 2 days.

Mr. PECORA. Is it the date of clearance?

Mr. CUTTEN. It is the date of clearance of those trades. So therefore, on Friday and Saturday: On Saturday, the 3d, there were 160,000 shares traded in, and on Friday the 2d there were 548,000 shares traded in. So that was a total of 700,000 shares of stock traded in in 2 days, and one account purchased 50,000 shares, and the other sold 100,000 shares.

Senator GORE. On the 2 days?

Mr. CUTTEN. In the 2 days; yes, sir. Now then, when I say 700,000 shares of stock were recorded on the New York Stock Exchange on those 2 days, carried officially, and also in the paper, it really meant that 1,400,000 shares of stock was traded in, because there has to be a seller for every 100,000 shares of stock that is purchased, and one

man sells to another man when that trade is established. So, in the clearing house on Monday it meant that 1,400,000 shares of Sinclair Oil changed hands.

Senator GORE. Oh, it does not mean that, does it?

Mr. CUTTEN. Yes, sir. There has to be a seller for every 100 shares of stock purchased.

Senator GORE. I know that; but suppose you sell 10 horses; John Doe sells 10 horses to Richard Roe. John Doe sold 10 horses to Richard Roe and Richard Roe bought 10 horses from John Doe, but there were not 20 horses. You sell 100,000 or 700,000 shares of stock. Suppose John Doe sells 700,000 shares of Sinclair Oil stock and Richard Roe buys 700,000 shares of stock. That is all there is to it.

Mr. CUTTEN. There are purchasers for the 700,000 shares.

Senator GORE. Oh, certainly.

Mr. CUTTEN. Because the various houses buy and sellers in the various houses sell.

Senator GORE. Certainly.

Mr. CUTTEN. So in the clearing house it would show that the transactions of Sinclair on those 2 days, according to the New York Stock Exchange records, would be 1,400,000 shares of stock.

Senator GORE. When we see listed in the papers every day the number of shares turned during the day, does that mean that twice as many turned as there were?

Mr. CUTTEN. Yes, sir. There is a seller for every buyer.

Senator GORE. I know there is a seller for every buyer. It takes two to make a trade. But there is only one thing traded in. What one sells the other buys.

Mr. CUTTEN. That is true, but——

Senator GORE (interposing). Take one apple. If John Doe sells one apple to Richard Roe, one sells and the other buys. It takes the two to make the participants in the trade, but there are not two apples. I do not know how you keep your books. Now, I am not challenging your statement about that. Certainly that is a revelation, if once 1 makes 2 after all.

Mr. CUTTEN. Well, there is a customer, of course, that has to sell and a customer that has to buy the same, the same as you say with the apples.

Senator GORE. Yes; but one sells and the other buys. One does not sell one thing and the other buy something else.

Mr. CUTTEN. The number of shares traded in, yes, or 700,000 shares of stock.

Senator GORE. Yes.

Mr. CUTTEN. But the deliveries in the clearing house, there are shares going in to 700,000 buyers and there are shares coming from 700,000 sellers.

Senator GORE. Yes; that is undoubtedly true.

Mr. CUTTEN. So there really have been 700,000 shares of stock delivered.

Senator GORE. Passed from one to the other. Certainly.

Mr. CUTTEN. Yes; that is true. Yes.

Senator GORE. Is the formation of these pools and syndicates a common practice in the market, or is it rather unusual, exceptional?

Senator GOLDSBOROUGH. Are you asking if it "is" or it "was"?

Senator GORE. I will divide, get the past tense first, and then the present.

Senator GOLDSBOROUGH. That is the way you did on these two things that you are talking about; he is a buyer and he is a seller.

Senator GORE. Is it the practice, Mr. Cutten?

Mr. CUTTEN. I don't think so; no, sir.

Senator GORE. Then what are the exceptional circumstances that justify it as a sort of an exception? What is the motive and the object back of the formation of a pool or syndicate?

Mr. CUTTEN. To make some money.

Senator GORE. Incidentally?

Mr. CUTTEN. Incidentally.

Senator GORE. Yes, sir. Out of whom? [After a pause.] I get your point and I know who is going to make the money. The people who are operating the pools or syndicates.

Mr. CUTTEN. Not always.

Senator GORE. Well, but that is the object and the motive. Now who are they going to fleece? If they make, not necessarily somebody else loses.

Mr. CUTTEN. No, sir.

Senator GORE. But somebody else would have made more if they had not operated in a particular transaction. What I am trying to get at, Mr. Cutten, is this: Now you are a broker on the exchange. Of course, I think an exchange as a place where people can sell bonds and stocks and securities when they get ready and where they can buy when they get ready to buy is indispensable. Yet I think the abuses of the market are tempting people to destroy the whole establishment, which would be a calamity. But I am trying to get you to tell out of your experiences the abuses, so that we can operate on the abuses and not on the market. If you do not help us to do that, people may operate on the market itself. They may abolish the exchange, when what we want to do is improve it, make it a fair trading place where people can buy and sell in good faith and get what they are buying, and not have somebody on the side that is cheating them out of their money on the market, that they do not know about. Now that is the point. If these pools and syndicates are formed to rig the market and run it up when there is not a legitimate advance or running down when there is not any reason for its decline, that is the sort of fellows we want to stop.

Mr. CUTTEN. Yes, sir.

Senator GORE. If we do not stop them, why, they may stop the market, and that is a good deal like abolishing a red-light district, which would make it worse instead of better. [Prolonged laughter.]

I am trying to find some way now to save you fellows' lives. You are committing suicide and you don't know it. We are trying to protect you against yourselves.

If you have any suggestions to make now or later on, I wish you would submit them, because I am serious about this. I think there are some abuses. The public undoubtedly thinks so. I think the public is right about it, and I think the public may go too far if we do not go some distance now in correcting real abuses.

Mr. TOMPKINS. May we submit them in writing, Senator?

Senator GORE. Yes.

Mr. TOMPKINS. We will be very glad to.

Mr. PECORA. Do you know of any abuses of the kind that have been referred to by Senator Gore, Mr. Cutten?

Mr. CUTTEN. Of rigging the markets?

Mr. PECORA. Yes.

Mr. CUTTEN. I believe, Mr. Pecora, that markets cannot be rigged when they are broad and active. Manipulation of a stock is marking a stock up or marking a stock down without a bonafide purchase or a bonafide sale, such as wash sales. The broader the public market, the more active the public may be in that particular market, the more impossible it is to really manipulate the market. When manipulation starts you have to absorb nearly all the floating supply of the stock before you can manipulate it. In that sense of the word that is what "manipulate" means.

Mr. PECORA. As a rule, what percentage of the outstanding stock constitutes the floating supply?

Mr. CUTTEN. You would have to get the records of the company to determine that.

Mr. PECORA. From your experience of many years as a broker?

Mr. CUTTEN. I would not know. I would not know, sir. There is no way of determining that. A company may have 30,000 stockholders or it may have 50,000 stockholders. It is usually the amount of stock that is floating in Wall Street in brokers' hands.

Mr. PECORA. That is, the floating stock is usually the stock in the hands of the brokers?

Mr. CUTTEN. Yes, sir. In the hands of the brokers.

Mr. PECORA. Available for borrowing or lending and so forth?

Mr. CUTTEN. That is correct. But you never can tell when an investor will sell his own holdings if the stock goes too high. I have not been in Wall Street many years.

Mr. PECORA. How many years have you been a member of the exchange?

Mr. CUTTEN. Since 1925.

Mr. PECORA. That is 8 years?

Mr. CUTTEN. Eight years. There are only two that I remember of, real manipulations in Wall Street. Those were the Stutz corner and Piggly Wiggly, and both of them ended disastrously.

Mr. PECORA. You have referred to circumstances under which rigging would be well-nigh impossible. Now under what circumstances is rigging possible, where there is no broad market?

Mr. CUTTEN. Only when there is no broad market, where the security may be quoted 50 bid, offered at 60. Then you could trade with yourself some place between 50¼ and 59¾. There would be no change of ownership.

Mr. PECORA. Where there is a broad market in the stock it is not necessary for a trading account to operate, is it?

Mr. CUTTEN. Where there is a broad market in the stock?

Mr. PECORA. Yes.

Mr. CUTTEN. Well, there should be, to maintain a market.

Mr. PECORA. If the market is broad it maintains itself, doesn't it?

Mr. CUTTEN. As a rule.

Mr. PECORA. So there is no occasion in such instances for the operation of a trading account, is there?

Mr. CUTTEN. Except to make money and except to maintain the market. At times the public may come in and buy great quantities

of the stock, and then they will cease. They may turn sellers within a day or two. Some news may come out which causes a general reaction. There may be a vacuum after the public's enthusiasm wanes, and the stock starts going down immediately.

Mr. PECORA. And then the trading account starts to operate in order to maintain the market?

Mr. CUTTEN. It supports it on the scale down.

Mr. PECORA. To maintain it?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. To keep prices from breaking?

Mr. CUTTEN. To maintain an orderly market on the downside.

Mr. PECORA. And by that you mean to keep prices from breaking?

Mr. CUTTEN. No, sir.

Mr. PECORA. What do you mean by "maintaining an orderly market on the downside?"

Mr. CUTTEN. Bid at every quarter of a point down, so that if the last sale is 39 and the best bid the specialist may have on his book is 38, it does not break on 1 sale of stock 1 point between sales.

Mr. PECORA. That is to prevent the market from breaking, is it not?

Mr. CUTTEN. Well, yes, the way you put it, yes, sir. But I may buy only 2 or 3 hundred shares at 8¾ and 3 or 4 hundred at 8⅝, and then probably a thousand shares at 8½. I am backing away all the time. I am not standing at a point and pegging the price. That is financial suicide. It always has been proven so.

Mr. PECORA. Now, this purchasing syndicate commenced to buy and sell this Sinclair Consolidated common stock as soon as it entered into this agreement on October 24, did it not?

Mr. CUTTEN. The syndicate; yes, sir.

Mr. PECORA. Who handled those orders for the purchasing syndicate?

Mr. CUTTEN. I did.

Mr. PECORA. Were they all handled by E. F. Hutton & Co., or were any of them executed by other brokers?

Mr. CUTTEN. Other brokers executed some of them.

The CHAIRMAN. Then the public did not know anything about this 1,130,000 shares being acquired by this syndicate?

Mr. CUTTEN. Yes; they did, sir.

The CHAIRMAN. How did they know about it?

Mr. CUTTEN. They knew it through the public press. The price was not given. The amount of shares was not definitely given. I believe one paper quoted a million shares of stock had been acquired, and I believe another paper quoted that 1,300,000 shares of stock had been acquired.

Mr. PECORA. But without mentioning the price?

Mr. CUTTEN. But did not mention the price; no, sir.

Mr. PECORA. So that the public had no information at all concerning the essential fact that the sale was made for a certain figure?

Mr. CUTTEN. No, sir.

Senator GORE. When they delivered this 500,000 shares the company delivered that on December 27?

Mr. CUTTEN. Five hundred thousand shares; yes, sir.

Senator GORE. The company delivered that much stock?

Mr. Cutten. Yes, sir; we, E. F. Hutton & Co., drew a check for $15,000,000 to the Sinclair Oil Co., and on December the 31st we drew a check payable to the Sinclair Oil Co. for $18,900,000.

Senator Gore. This was treasury stock?

Mr. Cutten. No, sir; it was not treasury stock; it was authorized stock.

Mr. Pecora. If a purchaser or a purchasing syndicate had gone into the market to buy in the open 1,130,000 shares of a security, inevitably the price would have gone up, would it not?

Mr. Cutten. Yes, sir.

The Chairman. How much of the stock had you sold at the time this 500,000 shares was delivered to you?

Mr. Cutten. I believe approximately 200,000 shares, Senator.

Mr. Pecora. What was the largest number of brokerage houses that were used by E. F. Hutton & Co. at any one time in executing the orders on behalf of the purchasing syndicate?

Mr. Cutten. In any one time during the day or the whole day, you mean?

Mr. Pecora. Yes.

Mr. Cutten. Or just at one time during the day?

Mr. Pecora. Well, we will say the largest number on any one day.

Mr. Cutten. The largest number on any one day?

Mr. Pecora. Yes.

Mr. Cutten. I don't imagine more than 2, or probably 3 at the most. That is, orders would have been given for the other broker to clear the stock for E. F. Hutton & Co.

Mr. Pecora. Not to clear the stock alone; to actually execute the orders?

Mr. Cutten. Oh, perhaps dozens.

Mr. Pecora. Dozens?

Mr. Cutten. Perhaps dozens.

Mr. Pecora. And what is the reason for that, Mr. Cutten? Why could not E. F. Hutton & Co. execute these orders itself?

Mr. Cutten. E. F. Hutton has about 20 brokers on the floor of the New York Stock Exchange who trade for them.

Mr. Pecora. And in addition to that it employed dozens of other houses to execute these orders?

Mr. Cutten. Not dozens of other houses; no, sir. Perhaps 3 or 4, I said. Where the house would clear, where I would give a house 10,000 shares of stock to sell at a fixed price or at the market and clear for E. F. Hutton & Co.

Mr. Pecora. How many floor members did E. F. Hutton & Co. have?

Mr. Cutten. Two until January 1, 1929, and three thereafter.

The Chairman. Did each of these dozen brokers get a commission on each transaction?

Mr. Cutten. Yes, sir; they get $2.50 a share, which is the floor brokerage which is always paid.

The Chairman. And then you would get commission on top of that?

Mr. Cutten. We would get $15 or $17.50 a hundred, whichever the commission is. But we would pay the floor broker $2.50 out of our commission.

Mr. PECORA. Now, on October 26, 1928, according to an exhibit in evidence as exhibit no. 113, the syndicate, which is the purchasing group, bought 2,400 shares of Consolidated Oil and sold 23,700 shares.

Mr. CUTTEN. What group is that, sir?

Mr. PECORA. The syndicate, the purchasing group.

Mr. CUTTEN. On what date?

Mr. PECORA. October 26, 1928.

Mr. CUTTEN. October 26; yes, sir.

Mr. PECORA. Are those figures correct?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Were those orders executed by E. F. Hutton & Co.?

Mr. CUTTEN. I believe they were executed by me on the floor of the stock exchange.

Mr. PECORA. Are you sure of that, entirely?

Mr. CUTTEN. I believe so. I would have to refer to records to find out definitely.

Mr. PECORA. Why did the syndicate on that day both buy and sell?

Mr. CUTTEN. Well, if I recall correctly, the syndicate did not sell any shares under a certain price. I think the price was 36¾ or 36½, if I remember correctly, and I think the purchases were all made around 35½ or 35¼ or 35, however low it sold.

Mr. PECORA. Why did the syndicate buy and sell on this day?

Mr. CUTTEN. It had sold first. It had to sell first, because the trading account was not formed. It could not have bought first. It had to sell first.

Mr. PECORA. The trading account was formed on October 25, the day before, was it not?

Mr. CUTTEN. I do not know the exact date. That did not become operative until November 5.

Mr. PECORA. The trading account, according to the exhibit in evidence, was dated on October 25, 1928.

Mr. CUTTEN. It was not all signed up by that time, sir.

Mr. PECORA. There is nothing here that indicates to the contrary.

Mr. CUTTEN. Well, I doubt very much if all the participants, 32 participants, all signed in 1 day. It was agreed to form that account on the 25th, but probably all of the participants had not signed for some days afterward.

Senator GORE. The stock that sold on the 26th—those were really short sales; they borrowed the stock?

Mr. CUTTEN. Yes, sir.

Senator GORE. Then, when they got the 500,000 shares later on, they returned the stock that they had borrowed?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Now, I will ask you again: Why did the purchasing syndicate both buy and sell on that day?

Mr. CUTTEN. It had sold the 23,700 shares of stock at, say, 36½ or 36¾, and then when the market receded it rather filled in and purchased 2,400 shares of stock.

Mr. PECORA. Why did it do that—is the question. We know that they did it. Now I want to know why it was done.

Mr. CUTTEN. Because it is the ordinary practice in maintaining a market or in trying to maintain a market.

Mr. Pecora. Was it to support the prices?

Mr. Cutten. It was to support the market at that time; yes.

Mr. Pecora. Was it to maintain the prices at the higher levels at which the syndicate wanted to sell, so that it could reap a profit?

Mr. Cutten. It was purchasing at a lower level, sir, not a higher level.

Mr. Pecora. Was it in order to maintain the market at the higher levels so that the syndicate could sell its shares at a profit?

Mr. Cutten. Not on that day; no, sir. It could not have been. It purchased at the low prices of the day. It sold at the high prices of the day.

Senator Gore. The record shows that, does it, Mr. Cutten?

Mr. Cutten. Yes, sir.

Mr. Pecora. Now the following day, the next trading day, October 29, 1928, it appears that the purchasing syndicate bought 34,100 shares but sold 37,800 shares. Were all those buying and selling orders executed by E. F. Hutton & Co.?

Mr. Cutten. Yes, sir; I think so.

Mr. Pecora. Or did it use other brokers?

Mr. Cutten. It may have used other brokers. I would have to check all my ledger sheets to find that out.

Mr. Pecora. I asked last week when I requested that you attend here that those records be brought here.

Mr. Cutten. Mr. Pecora, that is a gigantic task. The New York Stock Exchange have five men in our office. They have been there now going on 2 weeks. I do not think they will complete their investigation for another 10 days.

Mr. Pecora. It is not a gigantic task to bring the ledger accounts here, is it?

Mr. Cutten. I have the ledger accounts. They came down. They were brought down. But the outside brokers, I cannot tell those from the ledger sheets. The ledger sheets show all sales and the purchases.

Mr. Pecora. Why was it necessary for this syndicate, the purchasing syndicate, to buy 34,100 shares on October 29 and to sell 37,800?

Mr. Cutten. To maintain the market. That is the only reason they bought the 34,000 shares.

Senator Gore. Now then, the prices that ruled that day and along about that time were the result of your efforts to maintain the market—in part that is true, is it not?

Mr. Cutten. Yes, sir; that is true as far as the purchasing is concerned, but remember this: I sold the stock as the public showed a demand for it.

Senator Gore. Yes, that is the point. The public was buying, of course, rather in the dark, without knowing that this maintenance was more or less artificial. Now then, in the course of a few months, this syndicate sold out and closed out, this trading account sold out and closed out, having existed and having operated to maintain a market and to maintain a price. So was it Tom, Dick, and Harry who bought during the existence of those two tries to maintain the market. They were just honest-to-God buyers. They thought the stock was selling for what it was worth. They did not know this

syndicate was buying 34,000 shares in a day in order to maintain the price they were paying. They were just buying because they thought the stock of Sinclair was worth $36 a share. They could not possibly have anticipated in the course of 3 or 4 months that there was a market supported by an agency that would go out of existence. What they were really doing was getting out when the getting out was good and leaving the stock in the hands of Tom, Dick, and Harry, with no artificial support. That looks to me like the vice in this business, Mr. Cutten. It is really for you men who were saving yourselves and, as you say, making money, and this Tom, Dick, or Harry who was buying your stock thought he was going to make money. He did not know you were going to get out and leave him the bag to hold. Now, there is the abuse that I do not know can be corrected. But there is where we want to operate if we can.

Mr. Cutten. But in maintaining a market, Senator, that is fluctuating and that is as broad as this, this account is not the only account that is really selling stock. Thousands of other stockholders of Sinclair are selling stock.

Senator Gore. Surely.

Mr. Cutten. That market is maintained for their benefit as well as it is for the benefit of the account.

Senator Gore. Yes. You said the syndicate had 3 or 4 different brokers selling; that is true.

Mr. Cutten. No, no, there must be others trading in it, of course.

Senator Gore. Oh, yes, but——

Mr. Cutten. For instance, the day we mentioned, on November 5, with one account selling 100,000 shares of stock out of 700,000 shares traded in, some other people sold 600,000 shares that day.

Senator Gore. Yes; and when on the 24th of October it went from 32 to 35½ the janitors and the waitresses, on such days, and in those days were trading. They said, "Here, this Sinclair is moving up. We had better get in before it goes any higher." They did not know that this syndicate, that this trading business was putting it up.

Mr. Cutten. No; we were not on that day, Senator, or any other day.

Senator Gore. It is just a coincidence that the day that it was formed it ran up 3½?

Mr. Cutten. It was the public participation, Senator.

Senator Gore. Yes; and the public participation in that sort of a market is that they watch it, and when a particular stock is active and a good deal turning over and it goes up a little bit they say "Here is the place to get in". and they get in. I know that is where the suckers bite. That is when they get on the trout line.

Senator Couzens. And they furnish the bait; that is the point.

Senator Gore. Yes. They were absorbing all those million shares. When the thing is over with—the syndicate and the trading account not thinking it was a good investment to hold permanently, sold it to somebody who thought it was a good thing to buy—it is then in that somebody's hands. And you say yourself that these agencies were organized and operated to maintain the market and to maintain the price and keep it from going down and discouraging Tom, Dick, and Harry and driving them out.

Mr. PECORA. Mr. Cutten, on this day that I am speaking of, namely, October 29, 1928, when the purchasing syndicate bought 34,100 shares but sold 37,800 shares, did they buy those 34,100 shares because the market showed a tendency to drop and the purchasing syndicate wanted to stop that tendency?

Mr. CUTTEN. I believe so. It must have.

Mr. PECORA. As those transactions go over the ticker there is nothing to inform the public which reads the ticker in order to keep abreast of the market that the purchase of these 34,100 shares was made at the instance of a group that had 1,130,000 shares which it wanted to sell to the public at a profit?

Mr. CUTTEN. No, sir.

Mr. PECORA. To that extent the information conveyed by the ticker of that day's transaction failed to inform the public that the buying was not done by the public in a disinterested fashion, but rather a substantial portion of it was done by a small group, the existence of which was not known to the public, which small group was actuated by the desire to maintain the price because it had a large block of that stock for sale?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. That is so, is it not?

Mr. CUTTEN. Yes.

Mr. PECORA. And to that extent these exchange transactions and operations are not of a kind that could be called or designated as a free and open market where the prices seek their own level or reach their own level through the normal operation of the law of supply and demand; is that not so, Mr. Cutten?

Mr. CUTTEN. I quite agree with you, if this account did not have the purchasing power that it had—because we had sold the 37,000 shares of stock and the 23,000 shares the day before—we did have purchasing power of 60,000 shares of stock if the market went down, because the secondary group had not become operative, and on the 29th you notice that the market broke from 39 down to 36⅝——

Mr. PECORA. On what day?

Mr. CUTTEN. On the 29th that you are referring to.

Mr. PECORA. And in order to prevent the break from becoming more violent——

Mr. CUTTEN (interposing). More violent.

Mr. PECORA (continuing). This purchasing syndicate bought 34,100 shares?

Mr. CUTTEN. That is correct; that is correct.

Senator GORE. They were really covering a short sale? That is what it amounted to, did it not?

Mr. CUTTEN. That is what it amounted to; yes, sir.

Mr. PECORA. Apparently, the market received that kind of support, because on October 30, the following day, according to exhibit no. 113, the purchasing syndicate bought 10,000 shares but succeeded in selling 43,900 shares. Is that so?

Mr. CUTTEN. That is so; yes, sir.

Mr. PECORA. So that the transactions in behalf of the purchasing syndicate on the buying side of the day before were of a character to enable the syndicate on the following day to sell 33,900 shares more than it bought—presumably at a profit. Is that right?

Mr. CUTTEN. In effect.

Mr. PECORA. In effect. The following day, October 31, 1928, according to exhibit no. 113, there must have been another tendency for prices to drop, because the purchasing syndicate bought 23,600 shares and sold only 27,900 shares. Is that true?

Mr. CUTTEN. Yes, sir.

Senator GORE. And the syndicate, assuming that all purchases and sales were made at those prices, made something like $50,000 that day on the stock? And on the 29th they sold thirty-odd thousand shares at 39 and bought thirty-odd thousand shares back at 36. That would be a profit of $90,000 that day?

Mr. CUTTEN. Assuming that they could have been sold at the high price, Senator, and purchased at the low price; yes, sir.

Senator GORE. Yes; how many members are there in your firm?

Mr. TOMPKINS. I think there are 15, Senator.

Mr. CUTTEN. At that time there were 15.

Senator GORE. Will you put them in the record, and the membership now? I do not mean to call them out offhand. Just insert them in the record.

Mr. CUTTEN. Yes.

(The following list of names of general partners and special partners of E. F. Hutton & Co. as of April 1929 was furnished by Mr. Tompkins for the record:)

APRIL 1929

General partners: George A. Ellis, Jr., Edward E. B. Adams, Warren H. Spurge, Frank M. Dick, Dewees W. Dilworth, George B. Wagstaff, Theodore A. Lauer, Robert E. Burns, Ruloff E. Cutten, William C. Van Antwerp, Gordon B. Crary, Allan H. Crary, Thomas W. Durant.

Special partners: Edward F. Hutton, Franklyn L. Hutton.

PRESENT PARTNERS

General partners: George A. Ellis, Jr., Edward E. B. Adams, Warren H. Spurge, George B. Wagstaff, Theodore A. Lauer, Robert E. Burns, Ruloff E. Cutten, William C. Van Antwerp, Gordon B. Crary, Allan H. Crary, Gerald M. Loeb, Alan J. Lowry.

Special partners: Edward F. Hutton, Frank M. Dick.

Mr. PECORA. It appears that the total volume of trading on that 30th day of October was 179,800 shares.

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Which, according to the discussion between you and Senator Gore a few minutes ago, does not mean that 179,800 shares actually changed hands, does it?

Mr. CUTTEN. Yes. One hundred and seventy-nine thousand eight hundred actually changed hands. There were 179,000 sold and 179,000 bought.

Mr. PECORA. And of that number 43,900 were sold by the purchasing syndicate?

Mr. CUTTEN. No, sir.

Mr. PECORA. Now, the following day, November 1, 1928, the purchasing syndicate bought——

Senator GOLDSBOROUGH. Give him a chance to answer the last question.

Mr. PECORA. I thought he had answered it.

Senator GOLDSBOROUGH. No.

Mr. PECORA. Did you answer my last question?

Mr. TOMPKINS. I do not think he did.

Mr. CUTTEN. No, sir. I said "No" on that. I am trying to figure the dates here. You asked me on October 31, did you not?

Mr. PECORA. Yes.

Mr. CUTTEN. Twenty-three thousand purchased and twenty-seven thousand sold?

Mr. PECORA. Yes.

Mr. CUTTEN. On the 31st—is that what you asked me—on the 31st?

Mr. PECORA. No; that was the 30th.

Mr. CUTTEN. On the 30th; yes.

Mr. PECORA. The 30th, 43,900 shares were sold by the purchasing syndicate?

Mr. CUTTEN. Well, that is our ledger date. That would be trades of the 29th. Two hundred and fifty-six thousand shares were traded in instead of 179,000 shares.

Mr. PECORA. Now on November 1 there were bought by the purchasing syndicate 21,600 shares, but only 5,700 were sold by it?

Mr. CUTTEN. Yes, sir.

Senator GORE. How much did they buy?

Mr. PECORA. Twenty-one thousand and six hundred shares were bought by the purchasing syndicate and 5,700 shares were sold by it.

Mr. CUTTEN. That was on the ledger——

Mr. PECORA. What was the occasion for such heavy purchases?

Mr. CUTTEN. The market went down.

Mr. PECORA. The market went down on November 1?

Mr. CUTTEN. No; that is the ledger date of November 1. That is the market date of October 31 when it went from 38 down to 37. The low that day was 36½. You have to look at the dates of the day before.

Mr. PECORA. Yes.

Mr. CUTTEN. The following day of November 2 you notice purchases of 6,400 shares. That probably took place when the market was around 37½ and when the market rallied to 42 and the account sold 60,500——

Mr. PECORA. I was coming to that.

Mr. CUTTEN. I beg your pardon.

Mr. PECORA. Will you please look at this exhibit marked "Committee's Exhibit No. 113" in evidence and tell us if the transactions shown thereon were had as of the dates which they bear, or do they represent the clearings on the following date?

Mr. CUTTEN. These are the ledger dates taken from our ledger sheets.

Mr. PECORA. And represent the clearings——

Mr. CUTTEN. Of the day before.

Mr. PECORA. Of the transactions had the day before?

Mr. CUTEEN. Of the transactions had the day before; and if it is a Monday it represents the transactions of Saturday and Friday before the Monday.

Mr. PECORA. According to exhibit 113 there were cleared in behalf of the purchasing syndicate on November 2 purchases at 6,400 shares, but sales of 60,500 shares.

Mr. CUTTEN. That is correct.

Mr. PECORA. Were these heavy selling transactions due to the fact that on the day before the purchasing syndicate bought 21,600 shares as against selling 5,700 shares?

Mr. CUTTEN. At first glance I would not say so. I would say, sir——

Mr. PECORA. Well, give it a second glance, or third, if necessary.

Mr. CUTTEN. Well, I cannot remember distinctly 5 years ago, Mr. Pecora. Here the stock went up 5 points on the day that you are referring to, and the syndicate sold 60,000 shares of stock. It only purchased 6,400 shares. I do not believe, with the public participation of 440,000 shares of stock being traded in on that particular day, that the 6,400 shares of stock that I purchased during that day had anything to do with the market going up.

Mr. PECORA. No. I am referring to the transactions of the previous day as paving the way for the transactions of the day when the syndicate sold 60,500 shares as against a purchase of only 6,400. The day preceding that the syndicate purchased 21,600 shares, but sold only 5,700 shares. Did that have the tendency to make the market bullish the following day so that the syndicate was able to dispose of 54,000 shares more than it actually bought?

Mr. CUTTEN. No, sir. Not with the volume of trading in that stock. No, sir.

Mr. PECORA. Then why did the syndicate buy 21,600 shares as against the sale of 5,700 shares on the preceding day?

Mr. CUTTEN. Trying to maintain a market, as I have said. Buying it on a scale down. When the market turned and went up, naturally we sold out rather than purchased. And more if it could. You will find in the transactions in both of the accounts that they were purchased on the way down and they were sold on the way up always. If the syndicate account, for instance, at the start of the account had not sold 200,000 or 300,000 shares of stock, whichever the total may be, the stock may have gone 10, may have gone 15 points higher with the way the stock was being traded in by the public.

Mr. PECORA. Oh, as a matter of fact, Mr. Cutten, did not this purchasing syndicate, with few exceptions, sell more than it bought?

Mr. CUTTEN. Yes, sir. And if it had not, due to the public demand for the stock, I believe that it would have gathered momentum and gone considerably higher than it did.

Mr. PECORA. It would not have been particularly displeasing or irksome to the purchasing syndicate that had these 1,100,000 shares to sell at a profit, would it?

Mr. CUTTEN. It would not; no. But they sold.

Mr. PECORA. They sold.

Mr. CUTTEN. They sold.

Mr. PECORA. To take advantage of the high prices?

Mr. CUTTEN. If they had not sold, I say, I believe that the market would have gathered momentum on the way up and probably gone 10 or 15 points higher.

Mr. PECORA. Did E. F. Hutton & Co. at that time send out any market letters to its customers?

Mr. CUTTEN. Not that I recall.

Mr. PECORA. Does it ever do that? Has it ever done that?

Mr. CUTTEN. Oh, yes, sir. We were sending market letters out to our customers; yes.

Mr. PECORA. Yes; that is what I was asking.

Mr. CUTTEN. Daily market letters. Morning market letters and afternoon market letters.

Mr. PECORA. And do you recall whether in its market letters any reference was made to the Sinclair Consolidated Oil Corporation stock?

Mr. CUTTEN. I do not.

Mr. PECORA. Do you know a man named Rodney—Earl Rodney?

Mr. CUTTEN. I know the name. I do not think I ever met him.

Mr. PECORA. What is his business?

Mr. CUTTEN. I think he is a broker.

Mr. PECORA. Can you produce from the files or records of your office market letters that were sent out by E. F. Hutton & Co. or by any of the brokerage houses that it used in the execution of any of those orders to buy or sell Sinclair Consolidated Oil Corporation?

Mr. CUTTEN. I could produce mine, sir.

Mr. PECORA. Yes. When could you have them here?

Mr. CUTTEN. Probably tomorrow.

Mr. PECORA. I wish you would give the necessary instructions to have them here tomorrow. And also at the same time, if you can, get copies of the market letters sent out by the other brokerage houses that you used in the execution of any of these orders to buy and sell Sinclair Consolidated Oil Corporation.

Mr. CUTTEN. I will endeavor to do so; yes, sir.

Senator GORE. Has he named those?

Mr. PECORA. Do you know the names of any of those other brokerage houses that were so used by you in these operations?

Mr. CUTTEN. I believe I have used F. B. Keech & Co. I believe Eastman-Dillon. Farroll Bros.

Mr. PECORA. Is that Farroll Bros.?

Mr. CUTTEN. F-a-r o-l-l Bros. They are the only ones that I can recall, Mr. Pecora.

Mr. PECORA. How about the firm of Bernheim, Herman & Co.?

Mr. CUTTEN. No, sir; I never gave them any clearance business to my knowledge.

Mr. PECORA. How about Earl Rodney?

Mr. CUTTEN. I never gave him any clearance business to my knowledge. I will be very glad to submit a list.

Mr. PECORA. How about Jackson Bros., Boesol & Co.?

Mr. CUTTEN. I don't believe so. I would have to see a complete list. All of that is a matter of record.

Mr. PECORA. You said before that the trading account which was formed under an agreement dated October 25, 1928, was not actually completed until some few days after that date. Is that right?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic copy of the agreement dated October 25, 1928, made by and between Arthur W. Cutten and Blair & Co., Chase Securities Corporation, Shermar Corporation, and Harry F. Sinclair. Will you look at it and tell us if it is a true and correct copy of the original agreement under which the trading account or syndicate was formed? [Handing same to Mr. Cutten.]

Mr. CUTTEN (after examining same). Yes, sir; it is.

Mr. PECORA. I offer in evidence the agreement just identified by the witness, being the one entered into on the 25th of October 1928, between Arthur W. Cutten and the persons named, and ask that it be spread upon the record.

The CHAIRMAN. It may be received in evidence and placed in the record.

(Agreement dated Oct. 25, 1928, between Arthur W. Cutten and Blair & Co., Chase Securities Corporation, Shermar Corporation, and Harry F. Sinclair, was received in evidence, marked "Committee Exhibit 130 of November 14, 1933", and is here printed in the record in full as follows:)

COMMITTEE EXHIBIT NO. 130, NOVEMBER 14, 1933

Agreement made and entered into as of this 25th day of October 1928, by and between Arthur W. Cutten of 209 Lake Shore Drive, Chicago, Ill. (hereinafter called the manager) party of the first part, and the subscribers hereto, severally (each of whom is hereinafter called the "subscribers") parties of the second part, and all of whom together constitute the syndicate:

Whereas, the parties hereto desire to form a syndicate for the purpose of buying and/or selling the shares of the common capital stock of the Sinclair Consolidated Oil Corporation; now, therefore

In consideration of the premises and the sum of $1 by each to the other in hand paid, the receipt whereof is hereby acknowledged, the subscribers hereby agree with one another and with the manager as follows:

1. The subscribers hereby form a syndicate for the purpose above expressed, and each subscriber for himself or itself, and not for any other, agrees to subscribe to an interest in said syndicate represented by the number of shares set opposite his or its name, and authorizes the manager to purchase at private sale, 1,130,000 shares of the common capital stock of the Sinclair Consolidated Oil Corporation, at the price of $30 per share, and thereafter to purchase, and/or sell for the syndicate account, from time to time, shares of the common capital stock of said Sinclair Consolidated Oil Corporation, provided only that the manager shall not have a net commitment at any one time for the syndicate account exceeding in the aggregate (including the shares so to be purchased at private sale) 1,130,000 shares of said stock.

All stock bought by the manager pursuant to the authority hereby given shall be carried by him in a syndicate account which he shall open on his books, or with any firm or firms, members of the New York Stock Exchange, which the manager may select. Each subscriber hereto shall participate in such purchases and/or sales, and in the profits and/or losses and reasonable expenses of the syndicate, in the proportion that the number of shares subscribed for by him or it bears to the total of 1,130,000. The manager may call upon the subscribers or any of them, from time to time, for payment of their or its proportion of all or any part of the stock purchased for the syndicate account, and each subscriber agrees to pay promptly the full amount of such call or calls, up to but not exceeding in any event the full amount of his or its individual liability as indicated by the interest in the syndicate subscribed for by him hereunder. Each subscriber shall, at the request of the manager, at any time, or from time to time, during or upon the termination of the syndicate, take up and pay for in full at the cost thereof to the syndicate, his or its proportion of any stock held for the syndicate or for which it may be committed, or at the option of the manager, shall margin to the manager's satisfaction, his or its proportionate part of any such stock held by the syndicate and shall meet his or its other syndicate obligations, if any, upon call by the manager. Stocks so taken up by participants during the life of the syndicate shall be for carrying purposes only and shall be subject to recall by the manager at any time.

2. In case of the failure of any subscriber to make such payments as and when called, the manager may sell the rights and interests of the defaulting subscriber in and under this agreement, and any stock represented thereby at public or private sale, at any time thereafter without advertisement or notice, and after deducting all interest or other costs and expenses the residue shall be applied on any liability or indebtedness of such defauting subscriber, and

if there be any deficiency he or it shall pay and discharge the same. Any overplus shall be paid over to such defaulting subscriber. The managers may purchase on any such sale the rights and interests of any defaulting subscribers, for the benefit of the nondefaulting subscribers and may call for and apportion any assessment to pay for the same.

3. The manager shall have the sole direction, management, and entire control of the business and transactions of the syndicate, and any stock purchased by him for the syndicate account may, in his discretion, be loaned by him or by any stock-exchange house carrying the syndicate account. He shall have full power to buy and/or sell said stock at public or private sale, or upon the New York Stock Exchange, for the account of the syndicate, in his uncontrolled discretion, but as above provided, he shall not have a net commitment for the syndicate account at any one time exceeding 1,130,000 shares of said stock, and shall not purchase, except on the floor of the New York Stock Exchange, any shares of said stock at a price in excess of $30 per share. The manager may become a subscriber to the syndicate, and in that event, his share in the assets, profits, losses, and expenses thereof, shall be on the same basis as any other member. He shall have the exclusive custody of the money and assets of the syndicate, but may deposit the same with any firm or firms, members of the New York Stock Exchange, or any national bank or trust company selected by him, and he may use the same in the operations of the syndicate. He may deal with any other group or syndicate of which he is a member and/or manager for the syndicate account, and no contract with any such group or syndicate shall be affected by reason of the fact that he is manager thereof or a member or participant therein.

4. The manager may borrow for the syndicate account such amounts as he may deem necessary not to exceed in the aggregate at any time the total amount due and unpaid from the syndicate subscribers, and may pledge all or any portion of the stock so purchased, or this agreement and the several payments to be made hereunder by the subscribers to secure any loan or loans made for the syndicate account. He may, for and on behalf of the syndicate, contract with any bank and/or trust company for any loan or loans necessary to carry on the operation of the syndicate, and may himself advance or loan money to the syndicate, charging for such advances the current interest rate charged by stock exchange firms to their customers.

5. As soon as subscriptions are obtained to the syndicate aggregating 1,130,000 shares of stock, the syndicate shall become operative without further notice.

6. The syndicate shall continue for a period of 180 days from the date hereof, but the manager may in his discretion extend the same for a further period or periods not exceeding in the aggregate 180 days. He may in his discretion close the operation of the syndicate at any time. At the expiration of the syndicate the manager shall prepare a statement of the syndicate operations and after paying all the costs and expenses of the syndicate, and settling all of its obligations, any money and/or stock belonging to the syndicate remaining shall be distributed pro rata among the various subscribers. The acceptance by the subscribers of any statement rendered by the manager at the expiration of the syndicate, together with any payment in either stock or money, or both, shown to be due by said statement, shall operate as a full and complete release of the manager from any and all liability hereunder.

7. The manager shall not be liable for any error in judgment or for any mistake of law or fact nor shall he be liable save for his own gross negligence or willful default, nor liable for any acts done or performed in good faith under any of the provisions of this agreement.

8. Each subscriber ratifies, assents to, and agrees to be bound by any action of the manager assumed to be taken under this agreement, and agrees to perform his undertakings herein as stated in this agreement to the full extent of the number of shares subscribed for as his participation herein, but in no event or under no circumstances shall he be called upon to pay or be liable for any amount beyond the interest in the syndicate subscribed for by him plus interest thereon. The failure of any subscriber to perform any of his undertakings hereunder shall not affect or release any other subscriber.

9. Any notice which the manager or any lender may have occasion to give to any subscriber shall be sufficient for all purposes if given in writing, mailed postpaid to the address of such subscriber set opposite his signature hereto.

10. Nothing contained in this agreement or otherwise shall constitute the subscribers partners with or agents or one another or for the manager or

render them liable to contribute in any event more than the interest in the syndicate subscribed for by them, plus interest thereon.

11. In case of the resignation or incapacity to act of the manager, a successor or successors shall be appointed in writing by a majority in amount of the subscribers.

12. This agreement shall be binding upon and enure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto and it may be executed in several counterparts each of which when so executed shall be deemed to be the original and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the manager, party of the first part, and the subscribers, parties of the second part, have subscribed this agreement, as of the day and year first above written.

ARTHUR W. CUTTEN,
Manager.
By R. E. CUTTEN.

Subscribers:	*Number of shares*
Blair & Co., Inc., by Elisha Walker, president, 24 Board Street	282,500
Chase Securities Corporation, H. G. Freeman, president, 60 Cedar Street	188,333⅓
The Shermar Corporation, J. Wernersbach, treasurer, 18 Prince Street	94,166⅔
Arthur W. Cutten	282,500
Harry F. Sinclair	282,500

Mr. PECORA. According to exhibit no. 115 in evidence there were altogether 32 participants in the trading account.

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Will you look at committee's exhibit no. 115 and see if that accords with your recollection of the fact? [Handing same to Mr. Cutten.]

Mr. CUTTEN (after examining same). Yes, sir.

Mr. PECORA. When were all those participants given their subparticipations?

Mr. CUTTEN. That I would not know and could not swear to it.

Mr. PECORA. Well, was it by November 5?

Mr. CUTTEN. I think they were.

Mr. PECORA. Will you look at the list of names embodied in that exhibit and tell us which of those participants in the trading account were invited to come in by you, either in the exercise of your own discretion or under instructions from Arthur W. Cutten?

Mr. CUTTEN. I think Mr. H. E. Merselles was invited by Mr. Arthur Cutten. Mr. Lawrence P. Fisher, by Mr. Cutten. Mr. W. H. Eshbaugh, either by me or by Mr. Fisher. I know he is a friend of Mr. Fisher's. Mr. Joseph Toplitsky, by me. The Continental National—well, they were one of the originals. Mr. Bartlett was a coparticipant with Mr. Cutten. Mr. Matthew C. Brush, I believe, by me. Mr. P. H. O'Neil, by me.

Mr. PECORA. Who is P. H. O'Neil?

Mr. CUTTEN. Patrick H. O'Neil, of California.

Mr. PECORA. Who is he?

Mr. CUTTEN. He, I believe, was one of the large stockholders of the California Petroleum Co., which since has merged with the Texas Oil Co. I believe he is a substantial stockholder of the Texas Oil Co. Trust Co. of Georgia by me. George Breen; he was a subparticipant of Mr. Arthur Cutten's. Edwin Weisl & Co., I think by me. James C. Wilson & Co., I think by Blair. Loew & Co., I think by Blair. Guardian Detroit Co.—I do not know on that at all.

Chase Securities Corporation—one of the originals. Shermar Corporation—original. E. F. Hutton & Co., by myself. Kissell, Kinnicutt & Co., I believe by Blair. J. & W. Seligman & Co., I believe by Blair. Janney & Co., I believe by Blair. Spencer, Trask & Co., I believe by Blair. H. F. Sinclair—himself. Harry Payne Whitney, by Mr. Sinclair. John H. Markham, Jr., by Mr. Sinclair. Benjamin Lissberger, by Mr. Sinclair.

The Famoth Corporation and the Traywin Corporation were originals. L. W. Hill & C. O. Kalman were originals. Joseph E. Cutten, by myself.

Mr. PECORA. Who were the Famoth Corporation? What sort of a corporation was that?

Mr. CUTTEN. I believe it is Mr. Tinker's corporation.

Mr. PECORA. How about the Traywin corporation?

Mr. CUTTEN. I believe that is Mr. Tinker's corporation.

Mr. PECORA. Mr. Tinker was then connected with the Chase Securities Corporation?

Mr. CUTTEN. I do not think so.

Mr. PECORA. Was he connected with the Chase National Bank?

Mr. CUTTEN. I do not think so. I think he had retired.

Mr. PECORA. Well, was he then with Blair & Co.?

Mr. CUTTEN. I think he was retired. I do not think he was with anyone in the Street.

Senator COUZENS. May I ask Mr. Cutten how it is that he remembers them all except the Guardian Detroit Co.? Do you know anyone connected with them?

Mr. CUTTEN. No; I do not.

Senator COUZENS. You remembered everybody else but them, and I do not like to have the Guardian Detroit forgotten.

Mr. PECORA. This trading account was formed at the instance of the original purchasing group participants, was it not?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Were the persons and corporations that were invited to participate in the trading account told of the agreement under which the purchasing group had acquired from the Sinclair Consolidated Oil Corporation 1,130,000 shares at $30 a share?

Mr. CUTTEN. I believe they were. It was discussed with them.

Mr. PECORA. Were any of them given any interest in the profits accruing to that original purchasing group?

Mr. CUTTEN. Were any of these participants?

Mr. PECORA. Were any of the subparticipants in the trading account given or promised any interest in any profits that might accrue to the purchasing group?

Mr. CUTTEN. Not to my knowledge.

Mr. PECORA. Now, one of the purposes of the formation of this syndicate was to maintain a market so that the purchasing group could sell at a profit the 1,130,000 shares which the purchasing group had acquired from the Sinclair Consolidated Oil Corporation at $30 a share, wasn't it?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Do you mean to say that those gentlemen who became subparticipants in the trading account, entered into that trading account and assumed whatever risks were inherent in it, to enable

the original purchasing group to dispose of their 1,130,000 shares at a profit, without being given an interest in those profits?

Mr. CUTTEN. They were given no interest in the profits that I know of.

Mr. PECORA. And they were told all about that transaction, whereby the purchasing group got those shares at $30 a share?

Mr. CUTTEN. I believe they were.

Mr. PECORA. Did you tell them about it?

Mr. CUTTEN. I told all that I invited in, about it.

Mr. PECORA. Did you give them copies of the agreement?

Mr. CUTTEN. No, sir; I did not.

Mr. PECORA. Did you acquaint them with the essential terms and provisions of that agreement?

Mr. CUTTEN. No; I did not.

Mr. PECORA. Well, how were they told? What were they told about them by you?

Mr. CUTTEN. The groups were told that a syndicate had been formed that had made a commitment to purchase 1,130,000 shares at $30 a share, and that another group was being formed to maintain the market, to purchase shares to make a profit; and that the original group wanted other participants in this secondary account to spread around the liability. That is about the substance of it, sir.

Mr. PECORA. And those persons that went into the trading account assumed the liabilities, knowing that the trading account was formed for the purpose of enabling the purchasing group to market those 1,130,000 shares at a profit?

Mr. CUTTEN. They all assumed the liability for anything that they might acquire in the market, yes, knowing that if they made a purchase in the market they were assuming that liability.

Mr. PECORA. And they voluntarily assumed that liability in connection with a trading account that was organized for the purpose of enabling the purchasing group to market its 1,130,000 shares at a profit without getting any share of those profits?

Mr. CUTTEN. Yes. I am positive they did not get any share of those profits of the original group.

Mr. PECORA. And they were told all about the purchasing group, I mean the trading account?

Mr. CUTTEN. I do not know that all of them were; no. But those whom I invited into it were told. I know that.

The CHAIRMAN. This trading account seems to have been confined to 1,000,000 shares.

Mr. CUTTEN. Yes, sir.

The CHAIRMAN. What about the other 130,000 shares?

Mr. CUTTEN. This is the second group. These people could have purchased another 1,000,000 shares of stock, and therefore this account could have been long 1,000,000 shares of stock, and the other account could have been long 1,130,000 shares of stock.

Mr. PECORA. This group we are talking about now dealt in 1,000,000 shares of stock?

Mr. CUTTEN. It was formed for 1,000,000 shares. This is the trading account. It could have purchased 1,000,000 shares of stock.

Mr. PECORA. Now, when were the trading operations of the purchasing group concluded?

Mr. CUTTEN. I think in May, about a month after the operations in the original syndicate.

Mr. PECORA. No; I am now talking about the original syndicate.

Mr. CUTTEN. I beg your pardon.

Mr. PECORA. It is the purchasing group.

Mr. CUTTEN. It was in April—let me see——

Mr. PECORA (interposing). April 16, 1929, was it not?

Mr. CUTTEN. Yes; April 16, 1929.

Mr. PECORA. And when was the trading account closed?

Mr. CUTTEN. May 17, 1929.

Mr. PECORA. Now, during the life of the purchasing syndicate, how many shares of Sinclair Consolidated Oil Corporation stock did it buy, and how many did it sell on the open market?

Mr. CUTTEN. In the open market?

Mr. PECORA. Yes.

Mr. CUTTEN. It purchased, roughly, 700,000 shares, and sold 1,700,000 shares, to be even.

Mr. PECORA. That is, it sold all of the 1,130,000 shares that it contracted to buy from the Sinclair Consolidated Oil Corporation at $30 a share, plus 700,000 shares it bought in the open market for the purpose of maintaining a market, as you say. Is that right?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. All those transactions resulted in a profit to the purchasing syndicate or group of 12 million dollars plus?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Now, how many shares were bought, and how many shares were sold by the trading syndicate during its life?

Mr. CUTTEN. There were 634,000 shares purchased, and 634,000 shares sold.

Mr. PECORA. And those transactions resulted in a gross profit to the trading account of $464,870.60, or a net profit after deducting 10 percent commission to the syndicate manager, of $418,383.54. Is that right?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Now, out of this gross profit, or out of this profit, by the way, of 12 million dollars which accrued to the purchasing syndicate, 2½ percent thereof was paid to a man named Fitzpatrick, was there not?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. And why was that done?

Mr. CUTTEN. I don't know, sir.

Mr. PECORA. Who made that payment to Fitzpatrick?

Mr. CUTTEN. We did.

Mr. PECORA. When you say "we" do you mean E. F. Hutton & Co.?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Upon whose authorization was it made by you?

Mr. CUTTEN. Of the manager.

Mr. PECORA. And who was the manager?

Mr. CUTTEN. Mr. Arthur W. Cutten.

Mr. PECORA. Mr. Arthur W. Cutten testified here last week that he did not know of any reason why Fitzpatrick was given 2½ per-

cent of this 12 million dollars profit. Do you know of any reason why that was done?

Mr. CUTTEN. I do not know personally; no, sir.

Mr. PECORA. Did you know who Fitzpatrick was at that time?

Mr. CUTTEN. I did. But I had never met him.

Mr. PECORA. And who was he?

Mr. CUTTEN. President of the Prairie Oil & Gas Co., I believe.

Mr. PECORA. He was the executive officer of it, wasn't he?

Mr. CUTTEN. I believe he was the president of the Prairie Oil & Gas Co.

Mr. PECORA. Was that company a competitor of the Sinclair Consolidated Oil Corporation?

Mr. CUTTEN. Now, I believe the Prairie Co.—and, you understand, I am not an oil man, but I believe the Prairie Co. was primarily a producer of oil, and the Sinclair Co. is a producer and a marketing company or distributing organization as well.

Mr. PECORA. To the extent that the Sinclair Co. was a producing company as well as a distributing company, was it a competitor of the Prairie Oil & Gas Co.?

Mr. CUTTEN. I believe it was.

Mr. PECORA. Can you think of any reason why the executive head of a competing company should have been given something like $300,000 out of the profits of this purchasing syndicate in the Sinclair Co. stock?

Mr. CUTTEN. Except that his name was mentioned. I heard his name as one of the participants, who was to get a portion of the 12 percent. You will recall in the original agreement that the original four, or the original five, were to give up 12 percent. And that is how I happened to hear this name mentioned. And I was instructed by Blair & Co. to pay Mr. Fitzpatrick 2½ percent. I telephoned Mr. Cutten, and told him apparently he was the other man in making up the approximately 12 percent, and he said to pay him. I always conferred with him. He probably does not recall it, and there is no reason why he should. We sent our check drawn to the order of Mr. Fitzpatrick, No. 24 Broad Street, care of Blair & Co. That is all that I know about it.

Mr. PECORA. What 12 percent are you talking about now?

Mr. CUTTEN. I believe in one of the original syndicates it says that 12 percent from the three twelfths, three twelfths, three twelfths, two twelfths, and one twelfth is to be allotted to others, and then——

Mr. PECORA (interposing). Who were the others? Was it Fitzpatrick?

(A pause, without response).

Mr. PECORA. Was it Fitzpatrick?

Mr. CUTTEN. I always understood him to be one of the others.

Mr. PECORA. Well, now, let me show you committee exhibit no. 114 in evidence, entitled, "List of Participants in Sinclair Purchasing Syndicate as Finally Constituted, With Percentages and Share of Profits Received."

Will you look at it and tell us if you see Fitzpatrick's name anywhere there?

Mr. CUTTEN. I do not.

Mr. PECORA. Do you see the names of persons and corporations other than original participants in the original purchasing group?

Mr. CUTTEN. I do.

Mr. PECORA. Does that exhibit show a division of the entire 100 percent interest of this purchasing group?

Mr. CUTTEN. It does.

Mr. PECORA. And it does not include Fitzpatrick?

Mr. CUTTEN. It does not.

Mr. PECORA. How does that correspond with the statement you have just made that you understand Fitzpatrick represented "those others" who were given a subparticipation by the members of the original or purchasing group?

Mr. CUTTEN. Because the subparticipants, such as Continental National Co., Arthur Reynolds, A. M. Andrews, the Famoth Corporation, the Traywin Corporation, and L. W. Hill & C. O. Kalman did not total 12 percent.

Mr. PECORA. And the combined interests shown on that exhibit total 100 percent of the participating interest.

Mr. CUTTEN. That is true.

Mr. PECORA. Where is there any room there for a payment of 2½ percent to Fitzpatrick?

Mr. CUTTEN. There is none.

Mr. PECORA. Who got that 12 percent you are speaking of? Who were the participants that got that subparticipation of 12 percent out of the shares of the original participants in the original group?

Mr. CUTTEN. It went to 1, 2, 3, 4, 5, 6 of the——

Mr. PECORA (interposing). But who were they?

Mr. CUTTEN. Continental National Co., Arthur Reynolds, A. M. Andrews, the Famoth Corporation, the Traywin Corporation, L. W. Hill & C. O. Kalman.

Mr. PECORA. Each one of these subparticipants received his proper share of the profits in accordance with the interest each of these subparticipants had in the purchasing group, did they not?

Mr. CUTTEN. Yes; they did.

Mr. PECORA. Well, then, where did the 2½ percent come from that went to Fitzpatrick?

Mr. CUTTEN. There was still a portion of the percentage to be given to Mr. Fitzpatrick, apparently, because the percentages of the Continental National, Arthur Reynolds, A. M. Andrews, the Famoth Corporation, the Traywin Corporation, L. W. Hill & C. O. Kalman, did not total the 12 percent of the original amount, the 12 percent that the original five had agreed to give up.

Mr. PECORA. How much do they total?

Mr. CUTTEN. These total 10 percent.

Mr. PECORA. Well, now, wasn't Fitzpatrick's 2½ percent deducted from the entire profit, a pure gift to Fitzpatrick?

Mr. CUTTEN. It was, I suppose.

Mr. PECORA. Do you know of any reason why that was done?

Mr. CUTTEN. I do not.

Mr. PECORA. Have you ever been given any reason for it by anybody?

Mr. CUTTEN. I had not.

Mr. PECORA. Did you ever question anybody about it?

Mr. CUTTEN. No, sir.

Mr. PECORA. Now, in checking the operations, both on the buying side and on the selling side, for the purchasing group, which as you say bought in the open market about 700,000 shares and sold not only the original 1,130,000 shares, but also those 700,000 shares, from whom did you get the orders that were executed in connection with those operations? That is, by "order" I mean instructions.

Mr. CUTTEN. From Mr. Cutten.

Mr. PECORA. From Mr. Arthur W. Cutten?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Did you get them from him daily by long-distance telephone?

Mr. CUTTEN. Not any specific orders; no, sir. I discussed with him every day, the market. I used to call him every night, and sometimes I would call him before the opening if there was any news in the papers which I thought might affect the market. Sometimes I would call him half a dozen times during the day. I always called him after the close and told him exactly what I had done. He left it, of course, to my discretion, because I was on the floor the most of the time, the floor of the New York Stock Exchange.

Mr. PECORA. Didn't he place certain limitations upon your discretion?

Mr. CUTTEN. He did, in a general way.

Mr. PECORA. Now, who engaged other brokers that were used to execute orders?

Mr. CUTTEN. I did.

Mr. PECORA. Why was it necessary to engage other brokers to execute those orders?

Mr. CUTTEN. Well, it is the custom on the Street to give orders out on a clearance basis to other brokers.

Mr. PECORA. How has that custom developed?

Mr. CUTTEN. Well, I might have sold 20,000 or 25,000 shares myself at the post, and I might have wanted to give an order to somebody else to sell 10,000 shares, so I would not appear all day long as a seller, selling daily all the time. So I would tell somebody else to sell 10,000 shares for me and clear the stock.

Mr. PECORA. Then it is in order to disguise or screen the identity of the party or parties selling and buying, is it not?

Mr. CUTTEN. Quite right.

Mr. PECORA. And that is considered an essential thing to the success of the operations of these trading accounts?

Mr. CUTTEN. Not necessarily; no, sir.

Mr. PECORA. But it was done in this case because you considered it advisable to do it?

Mr. CUTTEN. Yes, sir.

The CHAIRMAN. What was the market price of the stock on May 17, 1929?

Mr. CUTTEN. On May 17, 1929, it closed at $38 a share.

The CHAIRMAN. And what is it today?

Mr. CUTTEN. I think it is $12.

Mr. PECORA. Now, in executing the orders, both on the buying and on the selling side, for the trading account whose judgment controlled or dictated those transactions?

Mr. CUTTEN. Mine.

Mr. PECORA. Exclusively yours or after daily telephone conversations with Arthur W. Cutten?

Mr. CUTTEN. After telephone conversations with him. I had a general idea of the amount of stock he wished to dispose of if the stock reached a certain level. I had a general idea how much stock he would be willing to acquire if it receded to a certain level.

Mr. PECORA. Well, you got that general idea from your daily talks with him?

Mr. CUTTEN. Certainly.

Mr. PECORA. And you were regulated in the exercise of your judgment and discretion by his views and wishes?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. And did you, in executing those orders, engage other brokers?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. And for the same reasons you engaged such other brokers in the case of transactions had in behalf of the purchasing syndicate?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Is Mr. Sinclair here now, Mr. Stanford?

Mr. STANFORD. No; he is not. I telephoned him, and he said he was available, and would be here at 2 o'clock.

Mr. PECORA. Mr. Chairman, I do not want to take up any other matters between now and the time of calling Mr. Sinclair to the stand. It is now 25 minutes to 1, and I suggest that the subcommittee recess now until 2 o'clock. Mr. Sinclair will be here at 2 o'clock, I believe.

Mr. STANFORD. Yes.

The CHAIRMAN. The subcommittee will now take a recess until 2 o'clock this afternoon.

(Whereupon, at 1:35 p.m. Tuesday, Nov. 14, 1933, the subcommittee recessed to meet at 2 o'clock the same day, in the same room.)

AFTERNOON SESSION

(The subcommittee reconvened at 2 p.m., Tuesday, November 14, 1933, at the expiration of the noon recess.)

The CHAIRMAN. The committee will come to order. Mr. Pecora.

Mr. PECORA. Mr. Sinclair.

TESTIMONY OF HARRY F. SINCLAIR, GREAT NECK, LONG ISLAND, N.Y.

The CHAIRMAN. You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God?

Mr. SINCLAIR. I do.

Mr. PECORA. Mr. Sinclair, will you give your full name and address to the reporter, for the record?

Mr. SINCLAIR. H. F. Sinclair, Great Neck, Long Island, N.Y.

Mr. PECORA. What is your business or occupation?

Mr. SINCLAIR. I am chairman of the executive committee of the Consolidated Oil Corporation.

Mr. PECORA. Was the Consolidated Oil Corporation formerly known as the "Sinclair Consolidated Oil Corporation?"

Mr. SINCLAIR. The name has been changed from the "Sinclair" to the "Consolidated"; yes.

Mr. PECORA. In the year 1928 were you an officer and director of the corporation then known as the Sinclair Consolidated Oil Corporation?

Mr. SINCLAIR. I was.

Mr. PECORA. What office did you hold?

Mr. SINCLAIR. Chairman of the board.

Mr. PECORA. How long had you been chairman of the board?

Mr. SINCLAIR. I do not recollect the number of years.

Mr. PECORA. Some years prior to 1928?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Do you recall, sometime during the summer of 1928, having a conference with a man by the name of Arthur W. Cutten with respect to the sale by the Sinclair Consolidated Oil Corporation of a large block of its capital common stock?

Mr. SINCLAIR. I had a consultation with him. I do not remember whether it was early in the summer or not.

Mr. PECORA. How many such consultations did you have with Mr. Cutten on that subject before any agreement was concluded with respect to that subject?

Mr. SINCLAIR. I could not say. There were a number of them, Mr. Pecora.

Mr. PECORA. I do not hear you.

Mr. SINCLAIR. I could not say. But there were a number of them.

Mr. PECORA. Over what period of time were they held?

Mr. SINCLAIR. To the best of my recollection, in August.

Mr. PECORA. They commenced some time in August?

Mr. SINCLAIR. I would say so.

Mr. PECORA. Who took the initiative in the holding of those conversations, you or Mr. Cutten?

Mr. SINCLAIR. I did.

Mr. PECORA. What was the original plan proposed to Mr. Cutten with respect to such sale of the capital common stock?

Mr. SINCLAIR. I do not understand your question.

Mr. PECORA. What was the substance of your first conversation with him on that subject? I will put it that way.

Mr. SINCLAIR. I could not remember.

Mr. PECORA. When did you first conceive the idea of making to Mr. Cutten or to any other person a proposed purchase from your corporation a large block of its capital common stock?

Mr. SINCLAIR. It was about the time these conversations started.

Mr. PECORA. Did the idea originate with you?

Mr. SINCLAIR. It originated with myself and my directors.

Mr. PECORA. Was it the subject of discussion at any meeting of the board of directors prior to your first conference with Mr. Cutten some time in August 1928?

Mr. SINCLAIR. I would say so, but I don't remember.

Mr. PECORA. Was it made the subject of discussion that would appear on the minutes of the corporation?

Mr. SINCLAIR. No; it was not—informal discussion.

Mr. Pecora. At board meetings?

Mr. Sinclair. Yes, sir.

Mr. Pecora. Will you tell the committee how the idea originated, either in your mind or in the minds of members of your board, that led you to go to Mr. Cutten some time in August of that year with the proposition that you discussed?

Mr. Sinclair. I would say the idea originated with my directors and myself to sell common shares to give us more working capital.

Mr. Pecora. To give the company more working capital?

Mr. Sinclair. Yes, sir.

Mr. Pecora. How many shares of common stock was the company at that time authorized to issue?

Mr. Sinclair. I think something like 1,100,000 shares; something of that sort.

Mr. Pecora. You probably misunderstood my question. How many shares were authorized to be issued by the corporation at that time?

Mr. Sinclair. That were not issued?

Mr. Pecora. That were not issued.

Mr. Sinclair (after conferring with an associate). Will you ask the question again, please?

Mr. Pecora. The reporter will read it.

(The reporter read the pending question.)

Mr. Sinclair. I do not understand the question.

Mr. Pecora. When was the company organized?

Mr. Sinclair. The Sinclair Co.?

Mr. Pecora. Yes, sir.

Mr. Sinclair. 1916.

Mr. Pecora. I understand it was in September 1919.

Mr. Sinclair. The original Sinclair Co. was 1916, and there were some consolidations, I think, later.

Mr. Pecora. The consolidation resulted in the organization of a company called the Sinclair Consolidated Oil Corporation, did it not?

Mr. Sinclair. I think so.

Mr. Pecora. When was the Sinclair Consolidated Oil Corporation organized?

Mr. Sinclair. 1919.

Mr. Pecora. How many shares of capital common stock was it authorized to issue at that time?

Mr. Sinclair. Five and a half million.

Mr. Pecora. Five and a half million shares. Of that number, how many had actually been issued by August 1928?

Mr. Sinclair. I think all but 1,116,000 shares, or 1,115,000 shares.

Mr. Pecora. By August 1928 had you had any informal discussions with members of the board of directors of the Sinclair Concolidated Oil Corporation looking to the issuance of those 1,115,000-odd shares?

Mr. Sinclair. My best recollection is that we did; yes, sir.

Mr. Pecora. As a result of those informal discussions did you go to Mr. Arthur W. Cutten in August of 1928 and discuss with him a proposition which you advanced to him on behalf of your corporation, to buy from your corporation those shares?

Mr. SINCLAIR. I could not say what date it was, but I did go to him along about that time.

Mr. PECORA. Had you received specific authority from the board of directors of your corporation to make such a proposition at that time to Mr. Cutten?

Mr. SINCLAIR. It was not a proposition. It was a tentative discussion.

Mr. PECORA. Had you received any authorization from your board of directors to discuss tentatively with him such a proposition?

Mr. SINCLAIR. No authorization that I would say was an authorization by any records or minutes of any meetings.

Mr. PECORA. Was it any other kind of an authorization?

Mr. SINCLAIR. I do not think so.

Mr. PECORA. What proposition did you originally make to Mr. Cutten?

Mr. SINCLAIR. I did not make any original proposition. It was a discussion.

Mr. PECORA. What proposition did you originally discuss with him?

Mr. SINCLAIR. It was not a proposition, I say. It was a suggestion.

Mr. PECORA. What suggestion did you originally discuss with him or make to him?

Mr. SINCLAIR. That we would like to sell.

Mr. PECORA. Sell what?

Mr. SINCLAIR. I think it was 1,100,000 shares.

Mr. PECORA. Did you ask him if he would like to buy?

Mr. SINCLAIR. I did.

Mr. PECORA. What did he say?

Mr. SINCLAIR. We discussed it.

Mr. PECORA. Give the committee the substance of that discussion.

Mr. SINCLAIR. It is pretty difficult for me to remember the substance of all the discussions we have had. I discussed this matter with Mr. Cutten fully.

Mr. PECORA. Don't you recall anything more about it than the fact that you discussed the subject with him in August?

Mr. SINCLAIR. I do not understand your question. I would like to answer it if I could. Naturally I discussed many things with him when I was discussing the proposition of selling him that many shares. I suppose we discussed the company, and we discussed the oil business, and we discussed the market situation, and many things, but I cannot recall or remember the full discussion.

Mr. PECORA. I have not asked you to recall the full discussion. I have asked you to give us the substance of it.

Mr. SINCLAIR. I do not know that I can give you any more than that.

Mr. PECORA. I did not get that answer.

Mr. SINCLAIR. I do not know that I can give you any more than the substance. If you will refresh my memory about it——

Mr. PECORA. How can I refresh your memory, Mr. Sinclair, when I had nothing to do with the transaction at that time?

Mr. SINCLAIR. I do not know what information you want.

Mr. PECORA. I want all the information you can give the committee with regard to your proposing or suggesting to Mr. Cutten that

he purchase from your company 1,130,000 shares of its capital common stock.

Mr. SINCLAIR. It would be pretty difficult for me to answer that question. However, I was endeavoring to sell to Mr. Cutten those shares, and I certainly gave him, as far as was possible, the best that I could put forward in reference to the company.

Mr. PECORA. Had you learned, as a result of any informal discussions that you had had with members of the board of directors of your company prior to your going to Mr. Cutten in August 1928, that the directors were willing to sell or were anxious or wanted to sell this block of 1,130,000 shares of the capital common stock of the company?

Mr. SINCLAIR. I would say that that the directors had discussed the matter informally and my impression was that they would be willing to sell.

Mr. PECORA. In the discussion you had, informally or otherwise, with members of your board, was there anything said concerning the price at which the company would be willing to sell those shares?

Mr. SINCLAIR. Not at that time.

Mr. PECORA. But you did gather, from those informal discussions, that the board would be willing to sell those shares, did you?

Mr. SINCLAIR. I did.

Mr. PECORA. Was there nothing said by you to Mr. Cutten when you first suggested his buying those shares, as to the price?

Mr. SINCLAIR. I do not think so, in the first discussion.

Mr. PECORA. How many conversations, all told, did you have with Mr. Arthur W. Cutten between the first one, which you say was sometime in August 1928, and the 24th day of October 1928?

Mr. SINCLAIR. I could not say.

Mr. PECORA. More than one?

Mr. SINCLAIR. I would say so.

Mr. PECORA. Half a dozen?

Mr. SINCLAIR. Perhaps.

Mr. PECORA. Somewhere in the stage, or along in the course of those conversations, there must have been some discussion of the price, must there not?

Mr. SINCLAIR. The price was not discussed definitely. The price, if you remember, at that time, was varying. In those transactions, as far as I can remember, the price usually terminates at the end of the discussion, and not at the start. We all watch the market, and endeavor to get as much as we can, and I think the purchaser is endeavoring to buy as cheap as he can.

Mr. PECORA. Did you refrain from discussing a price for those shares with Mr. Cutten until about the end of the negotiations you had with him?

Mr. SINCLAIR. I did not refrain.

Mr. PECORA. Did you discuss the price, or did you fail to discuss the price, for any reason whatsoever until near the end of those negotiations?

Mr. SINCLAIR. I cannot remember. We may have discussed price.

Mr. PECORA. What price did you ever discuss with him?

Mr. SINCLAIR. The only price that I finally discussed with Mr. Cutten was the price of $30 a share.

Mr. PECORA. When, for the first time, do you now recall you mentioned that price to him?

The CHAIRMAN. Mr. Sinclair, would you mind sitting a little closer to the table so that we can hear?

Mr. SINCLAIR. I am sorry. Your question again, please?

(The reporter read the pending question.)

Mr. SINCLAIR. Well, I could not say.

Mr. PECORA. Was it toward the end of the negotiations?

Mr. SINCLAIR. I would say so; perhaps several weeks before—three weeks. I could not say.

Mr. PECORA. Did he demur to the price when you first mentioned it to him?

Mr. SINCLAIR. He demurred at the price before he signed the contract.

Mr. PECORA. What did he say about it?

Mr. SINCLAIR. He said it was too high.

Mr. PECORA. Did he make a counter proposal as to price?

Mr. SINCLAIR. He did not.

Mr. PECORA. Did you finally convince him that $30 a share was fair and reasonable?

Mr. SINCLAIR. He accepted that price.

Mr. PECORA. Was it as a result of bargaining between you and him?

Mr. SINCLAIR. Well, I could not say. He would have to answer that question himself.

Mr. PECORA. You were a party to the conferences.

Mr. SINCLAIR. All the time trying to sell.

Mr. PECORA. At $30?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. What price, other than $30, did he ever mention as a price that would interest him?

Mr. SINCLAIR. That I could not say, but it was always below $30. I will say that.

Mr. PECORA. Was regard given by you, in the course of these conferences, to the market quotations for the stock?

Mr. SINCLAIR. I did not get that question.

(The reporter read the pending question.)

Mr. SINCLAIR. Somewhat; yes, sir.

Mr. PECORA. How did the market quotations compare with the $30 price that you were asking?

Mr. SINCLAIR. I think the market was somewhat below $30.

Mr. PECORA. Do you recall what the book value of the stock was during the course of these negotiations that you were conducting with Mr. Cutten?

Mr. SINCLAIR. I think somewhere around $50.

Mr. PECORA. Did the book value, in your opinion, reflect the true or the intrinsic value of the stock?

Mr. SINCLAIR. I did not think so.

Mr. PECORA. What did you think was the intrinsic value of the stock at that time?

Mr. SINCLAIR. It depended largely upon the condition of the oil business.

Mr. PECORA. Well, whatever that condition was, what did you think was the intrinsic value of the stock at that time?

Mr. Sinclair. I thought $30 a share was a very good value or I would not have sold them, or proposed to my directors to sell them at $30 a share.

Mr. Pecora. Why was there that wide difference between what you considered to be the intrinsic value of the stock and its book value?

Mr. Sinclair. I could not say. It was only my opinion in reference to the value of oil properties.

Mr. Pecora. You were currently informed of the book value of the stock of your company, were you not?

Mr. Sinclair. I was; certainly.

Mr. Pecora. Did you think, currently, that the book value was out of line with its intrinsic value?

Mr. Sinclair. I thought so.

Mr. Pecora. Due to what?

Mr. Sinclair. Due to the oil situation as it came about over a period of years.

Mr. Pecora. What do you mean by the oil situation as it came about?

Mr. Sinclair. I mean properties were not as valuable as they were before that time. They were selling at less. Oil was selling in lesser amount, and so forth, and so on. Our profits were not as they should have been.

The Chairman. May I ask, Mr. Sinclair, what do you mean by "book value"? What is that based upon?

Mr. Sinclair. Senator, book value is usually based upon the price that you pay for properties acquired, adding to that your surplus earned, and so forth.

Mr. Pecora. In other words, the liquidating value?

Mr. Sinclair. Book value liquidating value?

Mr. Pecora. Wouldn't it be under those circumstances?

Mr. Sinclair. I don't think so.

Senator Couzens. Did you add to your book value a discovery value?

Mr. Sinclair. I think not, Senator.

Senator Couzens. You just figured actual cost in the book value?

Mr. Sinclair. Yes.

Senator Couzens. It was the practice in the oil industry in those days, though, was it not, to add a discovery value to the properties?

Mr. Sinclair. Some companies did that, but I don't think we did it. I don't recall that we did.

Mr. Pecora. What is this element of discovery value based upon?

Mr. Sinclair. The element of discovery value?

Mr. Pecora. This element that has been referred to as discovery value.

Mr. Sinclair. I did not refer to it. We did not practice it.

Mr. Pecora. What is it based upon, whether you practiced it or not?

Mr. Sinclair. I think some companies based it upon the fact that they take a lease and make a producing property of it, and they write up the value.

Mr. Pecora. Sort of a prospect value, is it?

Mr. Sinclair. They pull themselves up by their own boot straps, in my opinion.

Mr. PECORA. When you first went to Mr. Cutten and discussed with him the proposel or suggestion that he buy these 1,130,000 shares, was it your purpose to sell to him individually and for his own account that block of stock?

Mr. SINCLAIR. If possible.

Mr. PECORA. If possible. Did he indicate that he was prepared to buy that large an amount of stock at that time?

Mr. SINCLAIR. I don't think I discussed that matter with him.

Mr. PECORA. Did you have in mind at the time the organization of a group or syndicate to purchase that amount of stock from your company?

Mr. SINCLAIR. It was my opinion that he would do that. That was his business, not mine.

Mr. PECORA. Did you suggest that to him?

Mr. SINCLAIR. I do not remember that I did; it may have been discussed.

Mr. PECORA. Have you no knowledge or recollection of that?

Mr. SINCLAIR. Not at that time.

Mr. PECORA. Eventually on October 24, 1928, negotiations between you and Mr. Cutten had progressed to a point where a firm agreement was entered into, dated October 24, 1928. Do you recall that?

Mr. SINCLAIR. Yes.

Mr. PECORA. Who prepared that agreement?

Mr. SINCLAIR. It was prepared, as I understand from my counsel, between our counsel and the counsel for the purchaser, Mr. Cravath's office.

Mr. PECORA. Was Mr. Cravath's office the counsel for the purchaser?

Mr. SINCLAIR. I understand so.

Mr. PECORA. That is, he was counsel for Mr. Cutten?

Mr. SINCLAIR. I understand so—and his group.

Mr. PECORA. On October 24, 1928, or by that date, had a group been formed, either by Mr. Cutten or by anyone else, to purchase this block of 1,130,000 shares?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Who formed that group?

Mr. SINCLAIR. Cutten.

Mr. PECORA. Did he take the initiative in that?

Mr. SINCLAIR. I would rather say he did; or I was taking the initiative as much as possible.

Mr. PECORA. Did you suggest that a group be formed, to Mr. Cutten, or did he suggest it to you?

Mr. SINCLAIR. I do not know; perhaps both.

Mr. PECORA. Did you become a participant in that group?

Mr. SINCLAIR. I did.

Mr. PECORA. To what extent, originally?

Mr. SINCLAIR. Originally, I think, one fourth.

Mr. PECORA. Who were the other participants in the group, originally, the purchasing group?

Mr. SINCLAIR. Blair & Co.

Mr. PECORA. What was the extent originally of their participation?

Mr. SINCLAIR. Blair & Co., 282,500 shares.

Mr. Pecora. What percentage is that?

Mr. Sinclair. I have not a lead pencil.

Mr. Pecora. You have one right before you. If you do not already know, I am afraid that you will have to make the calculation.

Mr. Sinclair (after a calculation by one of his associates). Twenty-five percent.

Mr. Pecora. Did you not know when I asked that question that it was a 25 percent participation, Mr. Sinclair?

Mr. Sinclair. I did not.

Mr. Pecora. Did you not have that in mind, from your knowledge and recollection of the facts pertaining to the formation of this purchasing group?

Mr. Sinclair. I had that in mind, but I certainly did not want to answer the question unless I was quite sure about it.

Mr. Pecora. What was the extent of your participation originally?

Mr. Sinclair. Twenty-five percent.

Mr. Pecora. Who were the other participants originally in the purchasing group?

Mr. Sinclair. The Chase Securities Corporation, 188,333⅓ shares.

Mr. Pecora. Representing what percent?

Mr. Sinclair. Two twelfths, I think.

Mr. Pecora. Who were the other participants originally?

Mr. Sinclair. Shermar Corporation, 94,166⅔ shares.

Mr. Pecora. Representing one twelfth?

Mr. Sinclair. I would say so; yes. Arthur W. Cutten, 282,500 shares.

Mr. Pecora. Representing 25 percent?

Mr. Sinclair. Yes.

Mr. Pecora. Do you know who suggested the inclusion of the Chase Securities Corporation in this purchasing syndicate?

Mr. Sinclair. I do not know whether I did or whether someone else did.

Mr. Pecora. If you did, what prompted you to do it?

Mr. Sinclair. I was endeavoring to get together a group to buy these shares.

Mr. Pecora. Did you understand, prior to October 24, that it would be necessary to form a group to buy these shares because Mr. Cutten himself could not buy them all?

Mr. Sinclair. No; I did not. I understood that Mr. Cutten was perfectly able to buy them all.

Mr. Pecora. Then why was the group formed?

Mr. Sinclair. Because, as I remember it, it was suggested by perhaps myself or maybe him. As I said a while ago, I do not remember.

Mr. Pecora. Had you had previous transactions with the Chase Securities Corporation, of any kind?

Mr. Sinclair. Oh, yes.

Mr. Pecora. Of a syndicate character?

Mr. Sinclair. Well, they have sold a great many securities for our company.

Mr. Pecora. In syndicates or through syndicates?

Mr. Sinclair. They usually organized syndicates.

Mr. PECORA. Who invited Blair & Co. to participate in this purchasing group?

Mr. SINCLAIR. Perhaps I did; I do not remember.

Mr. PECORA. Had you had similar transactions prior to that time, with Blair & Co.?

Mr. SINCLAIR. Not similar transactions.

Mr. PECORA. Had you had other business transactions involving the purchase or sale or both of securities, with Blair & Co.?

Mr. SINCLAIR. Yes.

Mr. PECORA. And in which syndicates were formed?

Mr. SINCLAIR. I imagine so.

Mr. PECORA. Who invited the Shermar Corporation to participate in the purchasing syndicate?

Mr. SINCLAIR. I could not say. Perhaps I did.

Senator GORE. Was that Mr. Wiggins' company?

Mr. SINCLAIR. That was Mr. Wiggins' company, as I understood it.

Mr. PECORA. With whom did you discuss in behalf of the Shermar Corporation the participation of that corporation in this purchasing syndicate?

Mr. SINCLAIR. I think it was discussed at the time Mr. Wiggin was present, if I remember correctly.

Mr. PECORA. Do you mean you discussed it with Mr. Wiggin?

Mr. SINCLAIR. I think Mr. Wiggin was present when the matter was discussed.

Mr. PECORA. Was he present as a representative of the Shermar Corporation or as a representative of the Chase Securities Corporation?

Mr. SINCLAIR. I could not testify to that. I imagine, both. I do not know.

Mr. PECORA. Do you remember meeting Mr. Callahan, who represented the Chase Securities Corporation, in any of the conferences that led to the formation of this purchasing group?

Mr. SINCLAIR. I do.

Mr. PECORA. Callahan represented the Chase Securities Corporation in those conferences, did he not?

Mr. SINCLAIR. I could not say. I think Mr. Freeman was present.

Mr. PECORA. Representing the Chase Securities Corporation?

Mr. SINCLAIR. I could not say who they were representing.

Mr. PECORA. How much of a participation was the Chase Securities Corporation originally invited to take in this purchasing group?

Mr. SINCLAIR. I could not answer that. Personally I should have liked to have them take it all.

Mr. PECORA. Who could answer that?

Mr. SINCLAIR. Perhaps, Mr. Cutten.

Mr. PECORA. Mr. Cutten referred us to you.

Mr. SINCLAIR. I am sorry.

Mr. PECORA. You want to refer us back to him?

Mr. SINCLAIR. What about the Chase Securities Co.? Cannot they answer those questions?

Mr. PECORA. They will be given a chance to. But Mr. Callahan is dead, unfortunately.

Mr. Sinclair. I think there was a Mr. Freeman there representing either the Chase Corporation or the Chase Bank. I do not know who he represented.

Mr. Pecora. I thought, in view of the fact that you were one of the original participants and you first proposed to Mr. Cutten the transaction whereby your company was to sell this large block of stock, that you would be in a position to tell us something about the primary details of this purchasing group, how it was formed, at whose invitations participations were given, and so forth.

Mr. Sinclair. I should be delighted to tell you any information I might have, Mr. Pecora.

Mr. Pecora. Are you unable to tell us because you never knew, or because you have a failure of recollection?

Mr. Sinclair. I will tell you what——

Mr. Pecora. I am asking you about it.

Mr. Sinclair. What was the question?

Mr. Pecora. You have answered a series of questions, and the formula that you have used was "I cannot tell you" or "I cannot say" or "I do not know." Do you make those answers because you never knew those things, or because you have at the present time a failure of recollection about those things?

Mr. Sinclair. I do not know that I have a failure of recollection, but it is rather difficult to remember the details of transactions of some 5 or 6 years ago.

Mr. Pecora. Did you ever have a larger transaction in dollars and cents with regard to the stock of the Sinclair Consolidated Oil Corporation than this one that I am now asking you about?

Mr. Sinclair. I rather—I mean, yes. I do not remember whether it was the Sinclair Consolidated Corporation or whether it was the corporation before that. [After consulting with associates:] That was the company that was organized, I believe, before the Sinclair Consolidated, the Sinclair Oil & Refining Corporation, or perhaps it was the Sinclair Consolidated; I do not remember.

Mr. Pecora. Had you ever had any business transaction prior to this time we are speaking of with the Shermar Corporation?

Mr. Sinclair. Directly?

Mr. Pecora. Directly or indirectly.

Mr. Sinclair. I could not say whether the Shermar Corporation was a member of various syndicates in the sale of our securities or not. I imagine they were. I do not know. Unless you participated in the syndicate you would not know the participants.

Senator Gore. Did your company own any stock in the Chase National Bank?

Mr. Sinclair. No, sir.

Mr. Pecora. How long before October 24, 1928, did you and Mr. Cutten and other members of the purchasing group, the original purchasing group, reach an agreement on a price of $30 a share for that stock?

Mr. Sinclair. I could not say, but it was a few days before; it may have been a week or 10 days. That is, the agreement reached subject to the approval of the directors of the company. I had no authority to make a firm agreement with anyone unless approved by the directors.

Mr. PECORA. When for the first time was the firm agreement entered into?
Mr. SINCLAIR. October 24.
Mr. PECORA. 1928?
Mr. SINCLAIR. Yes, sir.
Mr. PECORA. At that time the agreement was entered into between the Sinclair Consolidated Oil Corporation as the seller and Arthur W. Cutten individually as the buyer?
Mr. SINCLAIR. Yes.
Mr. PECORA. But you knew that Arthur W. Cutten individually was not going to be the buyer, did you not, at that time?
Mr. SINCLAIR. I did.
Mr. PECORA. You knew that a purchasing group had been formed, consisting of five units, namely, you, Cutten, Blair & Co., the Chase Securities Corporation, and the Shermar Corporation?
Mr. SINCLAIR. Right.
Mr. PECORA. Why was not the firm agreement made with those members of the purchasing group instead of with Mr. Arthur Cutten individually?
Mr. SINCLAIR. I could not tell you.
Mr. PECORA. You were conducting these negotiations for your corporation, were you not?
Mr. SINCLAIR. Right.
Mr. PECORA. Why can you not tell us why such an important agreement was made with Mr. Cutten individually instead of with the persons that you knew were going to be the actual buyers?
Mr. SINCLAIR. I cannot answer that question, because it did not make any difference to me whether the contract was made with the group or with Mr. Cutten.
Mr. PECORA. Why did it not make a difference?
Mr. SINCLAIR. Because I was going to be a member of the group immediately.
Mr. PECORA. Then, why did you you not have yourself included in the agreement to purchase?
Mr. SINCLAIR. I do not know, unless my attorney might tell you, or somebody's attorneys. I have no reason for its not being me direct, or any reason for its not being made with Mr. Cutten. Personally I did not care.
Mr. PECORA. It was known that the actual purchasers were to be five individuals or corporations, was it not?
Mr. SINCLAIR. Yes.
Mr. PECORA. And despite that known fact at that time the agreement was made with Mr. Cutten individually by your corporation, was it not?
Mr. SINCLAIR. I think so.
Mr. PECORA. That was advisedly done, was it not?
Mr. SINCLAIR. Not by me.
Mr. PECORA. By whom?
Mr. SINCLAIR. I do not know. I did not participate in the meeting; I do not know. But I am pretty sure that the directors of the corporation understood who and what the group was going to be. But why they made it in the name of Mr. Cutten I could not say. It may be strange, but that is a fact. I had not any reason

for its not being made with the group, and I had no reason for its not being made with Mr. Cutten.

Mr. PECORA. Why was the agreement made in a form that was at variance with what was known to be the actual fact, namely, that the purchaser was not to be Arthur W. Cutten in his own individual right, but that the purchaser was to be this syndicate of five members?

Mr. SINCLAIR. I cannot tell.

Mr. PECORA. What?

Mr. SINCLAIR. I cannot tell you.

Mr. PECORA. Who do you think could say?

Mr. SINCLAIR. I would suggest the attorneys.

Mr. PECORA. Who were the attorneys that advised that the agreement be made in that form?

Mr. SINCLAIR. I do not know whether they advised it or not. The contract was certainly made that way.

Mr. PECORA. Who were the attorneys you had in mind when you suggested that the attorneys could answer the question?

Mr. SINCLAIR. Mr. Stanford was our general attorney at that time. He is right here.

Mr. PECORA. Mr. Stanford has already been sworn, and I will ask him if he can enlighten this committee as to the reason for that.

Mr. STANFORD. I do not know why the contract was made in the name of Cutten rather than the group.

Mr. PECORA. Do you know anybody that does know?

Mr. STANFORD. Allow me to answer the question.

Mr. PECORA. I thought you had when you said you did not know.

Mr. STANFORD. I will finish my answer. and then you can ask me another.

Mr. PECORA. All right.

Mr. STANFORD. I say, I do not know why the contract was made individually with Mr. Cutten rather than the group, except that it must have been at the request of the group it was made that way.

Mr. PECORA. Mr. Stanford, were you a participant in the discussions with the group in which the decision was made to have the contract made with Mr. Cutten individually?

Mr. STANFORD. No, I was not.

Mr. PECORA. Mr. Sinclair, I am afraid that I will have to fall back on you. I have adopted your suggestion of referring the matter to Mr. Stanford. You have heard his answers which are that he does not know, in substance. Do you know the reason why it was done?

Mr. SINCLAIR. I have said that I did not.

Mr. PECORA. Do you know anybody that does know the reason why it was done in that way?

Mr. SINCLAIR. I do not. Perhaps some one in this group does; but I do not.

Mr. PECORA. You were in the group.

Mr. SINCLAIR. I do not know everything that was done.

Mr. PECORA. Mr. Cutten last week did not seem to know, when he testified last week before this committee.

Mr. SINCLAIR. Could you tell me what is the difference whether it was made with the group or whether it was made with Mr. Cutten?

Mr. PECORA. That is what I want you to tell us.

Mr. SINCLAIR. I do not know.

Mr. PECORA. Why it was done that way.

Mr. SINCLAIR. I do not know. I cannot answer. It was not a secret at all.

Mr. PECORA. What is that?

Mr. SINCLAIR. It was not a secret.

Mr. PECORA. It was not done by accident, was it?

Mr. SINCLAIR. Perhaps it might have been; I do not know.

Mr. PECORA. Are those things done by accident, Mr. Sinclair—a deal involving $30,000,000? They are not done by accident, are they?

Mr. SINCLAIR. I would not think so.

Mr. PECORA. Do you not think it was done by design?

Mr. SINCLAIR. Well, I could not answer that question. Perhaps you are right.

Mr. PECORA. Can you suggest any reason why it should have been done by design in that way?

Mr. SINCLAIR. I have said I could not.

Mr. PECORA. You could not even suggest a reason?

Mr. SINCLAIR. No, sir.

Mr. PECORA. Now, do you recall when the agreement was signed by the Sinclair Consolidated Oil Corporation, this agreement of October 24, 1928?

Mr. SINCLAIR (addressing an assistant). What is the date, please? [After a pause.] October 24.

Mr. PECORA. I know; but when on that day, during the forenoon or the afternoon?

Mr. SINCLAIR. I would say the afternoon. We usually have our meetings around 1 o'clock.

Mr. PECORA. You mean meetings of the board?

Mr. SINCLAIR. Yes, sir; executive committee.

Mr. PECORA. Was there a meeting of the board of directors of the Sinclair Consolidated Oil Corporation held on that day?

Mr. SINCLAIR (after conferring). It was an executive committee meeting on the 24th. The contract was signed and I understand that the directors' meeting was the next day, approving the contract.

Mr. PECORA. Was the meeting of the executive committee of the board held before or after the agreement between the corporation and Cutten was formally entered into?

Mr. SINCLAIR. Read that question, please.

(The shorthand reporter read the question of Mr. Pecora.)

Mr. SINCLAIR. I am trying to get your question correct in my mind. Do I understand the question to be whether or not the contract was signed before the approval of the executive committee? Was that the question?

Mr. PECORA. Yes, sir.

Mr. SINCLAIR. I do not think it was.

Mr. PECORA. Where was this agreement signed, at the office of the company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Same place where the meeting of the executive committee was held?

Mr. SINCLAIR. I do not know whether in that same room or not.

Mr. PECORA. In the same offices?

Mr. SINCLAIR. In the same building; yes.

Mr. PECORA. Well, in the offices of the Oil Corporation?

Mr. SINCLAIR. Yes.

Senator GORE. Mr. Sinclair——

Mr. SINCLAIR. Yes, sir.

Senator GORE. What was the object in making this sale of stock and raising this money? Was it to buy new properties, to develop old properties, to pay debts, or both? What was the immediate object?

Mr. SINCLAIR. I would say, Senator, for both.

Senator GORE. What was done with the money after the sale was made?

Mr. SINCLAIR. During '28 we expended some 20 million dollars for capital expenditures; '29 I think over 40 million. Those moneys were used in the regular course of business. I do not remember whether there was any funded debt included in the expenditures or not.

Senator GORE. Do you know whether you had definite commitments that you wanted to meet with the proceeds of the sale?

Mr. SINCLAIR. No; we did not. Of course, we had quite some funded debt, Senator, which is more or less definite.

Senator GORE. Maturing?

Mr. SINCLAIR. No; not at that moment. [After conferring.] The first maturity was September 1930. I was going to say, Senator, that our competitors in the oil industry are usually rather busy taking advantage of an opportunity to purchase, and I feel that it is a very wise thing for any oil company to have plenty of money in the treasury if it possibly can, whether you do use it or you do not.

Senator GORE. You would not limit that to oil companies, would you?

Mr. SINCLAIR. That is about all I know anything about, Senator.

Senator COUZENS. Was the Prairie Oil Co. a competitor of yours at that time?

Mr. SINCLAIR. Yes, sir; in the producing business, Senator.

Mr. PECORA. Your company was a producing as well as a distributing company?

Mr. SINCLAIR. Yes.

Mr. PECORA. The Prairie Pipe Line was the competitor, was it, Mr. Sinclair, in the pipe-line business?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Mr. Sinclair, reverting again to the fact that the agreement by your corporation to sell its 1,130,000 shares was in form made with Mr. Arthur W. Cutten individually, although at the time you knew that a syndicate of which you were a 25 percent member or participant was actually going to buy that block of stock, the reason the contract was signed by Mr. Cutten individually was to conceal your name from the record as a participant in the purchasing group?

Mr. SINCLAIR. It was not.

Senator COUZENS. Why wasn't the stock offered to the stockholders?

Mr. SINCLAIR. Senator, at the time these negotiations were being had the shares of our company in the past 4 years before that time had never sold as high as 30. I do not think that we would

have been successful—that is my personal opinion—if the shares had been sold to the stockholders. If they had been we would not have received, in my opinion, as much as $30 a share for them, and I doubt very much whether you could find a syndicate to underwrite shares that the stockholders do not wish to accept only at a very low cost.

Senator COUZENS. One of the reasons for that would have been that you earned only 89 cents a share in 1927, and even at a capitalization of $30 a share it would have earned only about $2.65 per share. It appears to me that it must be obvious to you that you could not have sold them on any such earning power as that. Could you?

Mr. SINCLAIR. I doubt very much whether we could or not have sold it to the stockholders, because it is rather difficult to get together a syndicate to underwrite that which they do not know whether they will accept except at a low figure.

Mr. PECORA. Was an opinion sought by you in behalf of your company from any attorney or attorneys concerning the necessity of the company first offering this block of stock to its then existing stockholders?

Mr. SINCLAIR. Will you repeat that question, please?

(The shorthand reporter read the question of Mr. Pecora as above recorded.)

Mr. SINCLAIR. Yes.

Mr. PECORA. And did you get an opinion to the effect that it was not obligatory or necessary for the corporation first to offer these shares to its stockholders?

Mr. SINCLAIR. I think so. However, the stockholders voted at one time that it was not necessary. I quite understood that. I thought I did, but I got an opinion from the attorney.

Mr. PECORA. Now, on October 24, 1928 you said a meeting of the executive committee of the board of your corporation was held.

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. At that time was there presented to the committee for its formal action a proposal to sell to Arthur W. Cutten this 1,130,000 shares for $30 a share?

Mr. SINCLAIR. I understand, sir.

Mr. PECORA. Who presented that proposition to the committee?

Mr. SINCLAIR. I do not remember.

Mr. PECORA. Did you?

Mr. SINCLAIR. I could not say. Perhaps I did, or my attorney.

Mr. PECORA. Had you previously told any members of the executive committee that you would be interested with Mr. Cutten in that purchase?

Mr. SINCLAIR. I think so.

Mr. PECORA. What is that?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Had you done that at any meeting of the executive committee, or had you done it through the medium of informal discussions with different members of the executive committee from time to time?

Mr. SINCLAIR. Informal discussions. Until the meeting of the executive committee at the time the contract was to be approved I did not vote, and the reason I did not vote was because I informed them

at that time that I would be interested in the syndicate. I left the room.

Senator COUZENS. That is what the directors of the Reconstruction Finance Corporation do when they lend themselves money.

Mr. SINCLAIR. Are you comparing this, Senator, with the Reconstruction Finance Corporation?

Senator COUZENS. I would not be competent to make a comparison, but I think that they all know the same tricks.

Mr. SINCLAIR. Well, do you agree that they are tricks?

Senator COUZENS. I think they are when they profit individually from their actions as corporate officers.

Mr. SINCLAIR. Is the Reconstruction Finance Corporation a Government institution or a private corporation?

Senator COUZENS. Sometimes it looks as though it was a private corporation, but I assume that legally it is a public corporation.

Mr. SINCLAIR. I cannot answer for the Government, Senator.

Senator COUZENS. I understand that. Neither can any of us.

Mr. PECORA. Mr. Sinclair, let me read to you from committee's exhibit no. 20, which contains an excerpt from the minutes of a regular meeting of the executive committee of said corporation, then known as Sinclair Consolidated Oil Corporation, duly held on October 24, 1928 (reading):

> Mr. Walker, at the request of the chairman, stated to the meeting that Arthur W. Cutten and associates had made an offer to purchase at a price of $30 per share all of the corporation's unissued authorized common stock, together with 14,481 shares of the same class of stock now held in the treasury of the corporation, a total of 1,130,000 shares, and further advised the meeting that Blair & Co., Inc., Chase Securities Corporation, and Mr. H. F. Sinclair were interested parties to the transaction.

Do you recall that action taken at the meeting of the executive committee? Is you recollection refreshed by my reading of that excerpt from the minutes?

Mr. SINCLAIR. I think that is correct.

Mr. PECORA. Was it correct that Mr. Cutten and his associates had made an offer to purchase those shares, or was it correct to say that the Sinclair Corporation had made an offer to sell those shares to Mr. Cutten and to his associates?

Mr. SINCLAIR. I rather think the minds had met.

Mr. PECORA. Their minds met in an agreement. The meeting of the minds was evidenced by an agreement, was it not?

Mr. SINCLAIR. Yes.

Mr. PECORA. But originally the proposition consisted of an offer made by you in behalf of your corporation to Mr. Cutten to sell to him and to his associates?

Mr. SINCLAIR. A tentative offer.

Mr. PECORA. Tentative offer—it was tentative until it was acted upon?

Mr. SINCLAIR. Quite.

Mr. PECORA. Yes. Now, do you know why the matter was brought to the notice of the executive committee on October 24, 1928, in the form in which it appears to have been brought to its attention by this extract from its minutes that I have read to you?

Mr. SINCLAIR. I do not understand your question Mr. Pecora.

Mr. PECORA. Let me put it in another way, then: Why were the members of the executive committee told when this matter was first

brought formally to their attention at this meeting of October 24, 1928, that Mr. Cutten and associates had made an offer to purchase from the corporation at a price of $30 per share these 1,130,000 shares?

Mr. SINCLAIR. Those were the facts.

Mr. PECORA. Was it not the fact instead that the corporation originally through you had offered to sell those shares for $30 a share to Mr. Cutten?

Mr. SINCLAIR. I had not the authority to sell the shares at $30 a share.

Mr. PECORA. Whether or not you had the authority, you undertook to open negotiations with Mr. Cutten for the purpose of selling in behalf of your corporation to him this 1,130,000 shares?

Mr. SINCLAIR. Very diligently.

Mr. PECORA. Very diligently?

Mr. SINCLAIR. Yes. I used every effort I had as a salesman to do it.

Mr. PECORA. I don't hear you, Mr. Sinclair.

Mr. SINCLAIR. I say I used every effort possible as a salesman to make the sale.

Mr. PECORA. Why would it not have been more correct, then, to have stated at this meeting of the executive committee on October 24 that the corporation through you had offered to sell those 1,130,000 shares at $30 a share to Mr. Cutten and that Mr. Cutten had agreed to buy them?

Mr. SINCLAIR. I don't understand your question.

Mr. PECORA. Mr. Reporter, will you read the question to him again, please? Will you follow him closely, Mr. Sinclair, and if there is a single word in that question that you do not know the meaning of, tell me, please.

(The shorthand reporter read the original question of Mr. Pecora as above recorded.)

Mr. SINCLAIR. I cannot answer the question, other than it did not make any difference to me.

Mr. PECORA. Did it make a difference to you to have the facts correctly set forth to the executive committee?

Mr. SINCLAIR. I thought it would. I was endeavoring to do that.

Mr. PECORA. Was it strictly correct to say that Mr. Cutten had made an offer to purchase these shares at $30 a share, or was it more correct to say that Mr. Cutten had accepted an offer that you conveyed to him in behalf of your corporation to sell him those shares at $30 a share?

Mr. SINCLAIR. Mr. Pecora, I cannot answer the question, because you may feel it is correct doing it one way; some one else may feel it is correct doing it the other way.

Mr. PECORA. I am asking you what your opinion is as to which would have been more correct or which would have been more in accordance with the known facts.

Mr. SINCLAIR. It is my opinion that what was done was correct.

Mr. PECORA. And what was done was the making of a statement to the executive committee that Mr. Cutten had made an offer to buy those shares for $30 a share. The truth of the matter is that Mr. Cutten never made any such offer until after you had proposed to

him in behalf of your corporation that your corporation would sell him those shares?

Mr. SINCLAIR. Before this meeting?

Mr. PECORA. Before that meeting; yes.

Mr. SINCLAIR. No.

Mr. PECORA. What?

Mr. SINCLAIR. I have said all the time it was a tentative offer that I made to Mr. Cutten, which must be approved by my board. Now whether Mr. Cutten said he would buy or I said I would sell or we will sell subject to the approval of the board, I do not know, Mr. Pecora.

Mr. PECORA. In what form was Mr. Cutten's offer submitted to the corporation?

Mr. SINCLAIR (after conferring). It was in the form of a written contract.

Mr. PECORA. Where is it?

Mr. SINCLAIR (after conferring). I think you have this information, Mr. Pecora.

Mr. PECORA. What is that?

Mr. SINCLAIR. I think you have this same information.

Mr. PECORA. I have no record of any offer made by Mr. Cutten to the corporation, Mr. Sinclair. If you have, I would be very glad to have you supply it or submit it.

Mr. SINCLAIR. There seems to be no written offer made by Mr. Cutten. It must have been verbal.

Mr. PECORA. To whom was it made?

Mr. SINCLAIR. Perhaps myself.

Mr. PECORA. Have you no recollection of it?

Mr. SINCLAIR. Well, I would not know. Some of the other directors might have been there at some of the former meetings.

Mr. PECORA. Well, this was the first time at which this matter was entered on the records of any meeting of either the executive committee or the board of directors of your company, was it not?

Mr. SINCLAIR. That was the first formal meeting.

Mr. PECORA. Let me read to you again, for the purpose of possibly refreshing your recollection, this extract from committee's exhibit no. 120, consisting of the excerpt from the minutes of the executive committee meeting of your corporation of October 24, 1928.

Mr. SINCLAIR. Reading from the first page?

Mr. PECORA. Reading from the first page. (Reading:)

> Mr. Walker, at the request of the chairman, stated to the meeting that Arthur W. Cutten and associates had made and offer to purchase, at a price of $30 per share, all of the corporation's unissued authorized common stock together with 14,481 shares of the same class of stock now held in the treasury of the corporation, a total of 1,130,000 shares, and further advised the meeting that Blair & Co., Inc., Chase Securities Corporation, and Mr. H. F. Sinclair were interested parties to the transaction.

You then were an interested party to the transaction by virtue of an agreement you had reached with Mr. Cutten, Blair & Co., and the Chase Securities Corporation that the four of you would form this purchasing syndicate?

Mr. SINCLAIR. Tentative agreement; yes, sir.

Mr. PECORA. When you refer to that as a tentative agreement, why do you designate it that way?

Mr. SINCLAIR. I designate it that way, Mr. Pecora, on account of the fact that if the executive committee of the board of directors had not approved of the contract it would not have been a contract. We would not have made it.

Mr. PECORA. But all the terms and conditions of the agreement among the participating members of the purchasing syndicate had been approved by those members and fully agreed upon?

Mr. SINCLAIR. Approved, yes.

Mr. PECORA. The agreement was to be effective in the event that the corporation sold those shares to Cutten and his associates for $30 a share?

Mr. SINCLAIR. Yes.

Mr. PECORA. Now let me read further from this extract from the minutes of the meeting of the executive committee. I am reading from committee's exhibit no. 120 again, second page:

Thereupon, Mr. Sinclair relinquished the chair to Mr. Watts, and, together with Mr. Walker, retired from the meeting while said offer was being discussed and acted upon.

Do you recall that occurrence?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And why did you and Mr. Walker leave the meeting?

Mr. SINCLAIR. Because we were parties to the transaction.

Mr. PECORA. You were on both sides of the transaction, were you not?

Mr. SINCLAIR. I was not on both sides. I was on the other side when I left the meeting.

Mr. PECORA. Well, as the chairman of the board of the directors of the corporation you were acting for the corporation, were you not, on the one side?

Mr. SINCLAIR. Not when I left the meeting.

Mr. PECORA. But up to that time——

Mr. SINCLAIR (interposing). Yes, sir.

Mr. PECORA (continuing). In the negotiations——

Mr. SINCLAIR. Yes, sir.

Mr. PECORA (continuing). You were representing the corporation, were you not?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did you state to the members of the executive committee the extent of your interest in this purchase?

Mr. SINCLAIR. I could not say. I rather imagine I did.

Mr. PECORA. Is there anything on any of the records of the corporation to show that you revealed to the members of the executive committee the extent of the interest which you were going to take with Mr. Cutten and other associates in this transaction?

Mr. SINCLAIR. No.

Mr. PECORA. What?

Mr. SINCLAIR. No.

Mr. PECORA. Would that indicate that you did not disclose the extent of your interest?

Mr. SINCLAIR. I do not think so. The extent of my interest in the syndicate was not a secret, Mr. Pecora.

Mr. PECORA. Why was it not stated on the record at this meeting of the executive committee?

Mr. SINCLAIR. I do not know.

Mr. PECORA. What?

Mr. SINCLAIR. I do not know.

Mr. PECORA. Do you know whether or not you revealed the extent of your interest?

Mr. SINCLAIR. I am quite sure that I revealed my interest to a number of the directors informally. I am quite sure I did not at this meeting.

Mr. PECORA. You did not at the meeting?

Mr. SINCLAIR I do not think so.

Mr. PECORA. And this meeting was the first meeting at which the matter was formally considered by the executive committee, was it not?

Mr. SINCLAIR. Right.

Mr. PECORA. The Mr. Walker referred to in this extract from these minutes was Mr. Elisha Walker who at that time was president of Blair & Co.?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Do you recall that Mr. Walker made known to the executive committee at this meeting of October 24 the extent of the interest of Blair & Co. in this purchasing group?

Mr. SINCLAIR. I do not know whether he did or not. He did not while I was in the meeting.

Mr. PECORA. How long did the discussion last before the executive committee, before it agreed to make this agreement with Cutten?

Mr. SINCLAIR. I cannot say.

Mr. PECORA. How?

Mr. SINCLAIR. I cannot say.

Mr. PECORA. Was there any protracted discussion of it?

Mr. SINCLAIR. I would imagine so.

Mr. PECORA. What is that?

Mr. SINCLAIR. I imagine so.

Mr. PECORA. Were you called in by the board to give them any further explanation of the transaction?

Mr. SINCLAIR. I was not.

Mr. PECORA. Or of the offer?

Mr. SINCLAIR. I was not.

Mr. PECORA. Was Mr. Walker?

Mr. SINCLAIR. I do not know.

Mr. PECORA. Well, who was at the board meeting after you and Mr. Walker retired from it to give the members of the executive committee full and complete information?

Mr. SINCLAIR. If you will take the same exhibit—I think it is 120?

Mr. PECORA. Exhibit 120; yes, sir.

Mr. SINCLAIR. The executive committee at that time consisted of 15 members. Those present were J. W. Carnes, E. H. Clark, Mr. Clarkson—R. L. Clarkson was a member, but not being present—C. E. Crawley, J. F. Farrell, S. L. Fuller, W. H. Isom, W. P. Philips, J. R. Simpson, E. W. Sinclair—E. W. Sinclair was not there. I was a member of the board, but was not present when the contract was executed. E. R. Tinker was a member, but not being present. Elisha Walker was there, but left the meeting. A. E. Watts was there and presided. Mr. H. P. Whitney was a member, but not being there.

Mr. PECORA. Well, who was there after you and Mr. Walker retired from the room to give the members of the executive committee complete information concerning this so-called "offer" from Mr. Cutten to buy those shares?

Mr. SINCLAIR. Our counsel was there.

Mr. PECORA. Mr. Stanford?

Mr. SINCLAIR. Mr. Stanford.

Mr. PECORA. Did not Mr. Stanford become a subparticipant in this purchasing group?

Mr. SINCLAIR. He became a subparticipant in my portion of the group, yes.

Mr. PECORA. And to that extent became a subparticipant in the purchasing group, is that right?

Mr. SINCLAIR. Yes.

Mr. PECORA. Who other than Mr. Stanford was there qualified and supplied with the necessary information to tell the executive committee all about this proposition?

Mr. SINCLAIR. I will say J. W. Carnes, E. H. Clark, C. E. Crawley, J. F. Farrell, S. L. Fuller, W. H. Isom, W. P. Philips, J. R. Simpson, A. E. Watts.

Mr. PECORA. Have you left out any names?

Mr. SINCLAIR. Only those who were not present.

Mr. PECORA. Yes. So that every one present was in possession of complete information about this transaction?

Mr. SINCLAIR. I think so.

Mr. PECORA. Where did they get it from?

Mr. SINCLAIR. They got it from our attorneys. They got it from the discussion that they had at this meeting.

Mr. PECORA. They got it from discussions that they had at this meeting?

Mr. SINCLAIR. Perhaps in meetings before in informal discussion.

Mr. PECORA. But there was no meeting before in which the matter came in formal discussion?

Mr. SINCLAIR. I said "informal discussion."

Mr. PECORA. Informal discussion?

Mr. SINCLAIR. Yes.

Mr. PECORA. Would a matter of this sort be of such slight consequence that it would not be entered on the minutes of the meeting when it was a matter of discussion at the meeting?

Mr. SINCLAIR. Yes.

Mr. PECORA. It would?

Mr. SINCLAIR. Yes. We discussed many things that never happened.

Mr. PECORA. Now, Mr. Watts was given a subparticipation in this purchasing group, was he not?

Mr. SINCLAIR. He was, later.

Mr. PECORA. He was the vice chairman of the corporation at that time?

Mr. SINCLAIR. He was.

Mr. PECORA. And one of those who voted to approve this transaction?

Mr. SINCLAIR. He did.

Mr. PECORA. And he got that subparticipation out of your original interest, did he not?

Mr. SINCLAIR. He did.

Mr. PECORA. Now, what other officers or directors of the company received a subparticipation in this original purchasing group from you?

Mr. SINCLAIR. J. F. Farrell.

Mr. PECORA. J. F. Farrell. Who else?

Mr. SINCLAIR. J. H. Markham, Jr.; E. W. Sinclair; P. W. Thirtle; A. E. Watts; H. P. Whitney.

Mr. PECORA. When were these various directors given these subparticipations in the purchasing group by you?

Mr. SINCLAIR. I would say 30 days. Sixty days. I could not remember. [After conferring with an associate.] About 3 weeks I understand.

Mr. PECORA. Did not Mr. F. W. Bartlett acquire a subparticipation?

Mr. SINCLAIR. Not from me.

Mr. PECORA. Not from you?

Mr. SINCLAIR. No, sir.

Mr. PECORA. Did he from anyone else among the original participants?

Mr. SINCLAIR. I do not know.

Mr. PECORA. Well, do you not know that Mr. Arthur W. Cutten gave him a subparticipation out of his interest?

Mr. SINCLAIR. I do not know; no.

Mr. PECORA. You do not know?

Mr. SINCLAIR. No.

Mr. PECORA. Is this the first time that you have heard of it?

Mr. SINCLAIR. Oh, I have heard of it, but I do not know.

Mr. PECORA. Bartlett was a director of the company, was he not, at the time he got this subparticipation in the original purchase?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Now, do you recall any other officer or director who either from you or through you, or from or through any other of the original participants in the purchasing group received a subparticipation in the purchasing group?

Mr. SINCLAIR. Mr. W. L. Conley.

Mr. PECORA. Mr. W. L. Conley?

Mr. SINCLAIR. Yes.

Mr. PECORA. How did he get his participation?

Mr. SINCLAIR. He got it from me. He was a vice president, but not a director. He did not belong to the executive committee.

Mr. PECORA. Who else?

Mr. SINCLAIR. That is all I have a list of here. Those who got subparticipation from these other men I know nothing about.

Mr. PECORA. Do you know of any reason why any of your officers or directors should get subparticipations from any of the other original participants in the purchasing syndicate?

Mr. SINCLAIR. I know of no reason; no.

The CHAIRMAN. Who was Mr. E. W. Sinclair?

Mr. SINCLAIR. He was my brother. He was not present at this meeting.

Mr. PECORA. Did you ever learn of any friction at this meeting of the executive committee that arose and manifested itself while they were considering this offer of Cutten's on October 24?

Mr. SINCLAIR. I did not.

Mr. PECORA. As far as you know did the thing go through there smoothly?

Mr. SINCLAIR. It did not or did?

Mr. PECORA. Did it?

Mr. SINCLAIR. I rather think so.

Mr. PECORA. Have you any doubt of it?

Mr. SINCLAIR. I have no reason to doubt it.

Mr. PECORA. No. Now at the time that this agreement of October 24 was entered into what was the market quotation for the stock?

Mr. SINCLAIR. I will have to refresh my memory. [After consulting with associates.] The range of the market of October 24 was from 32 to 35⅞. The range of the market on the 23rd was 29⅞ to 32.

Mr. PECORA. I am talking about the 24th.

Senator COUZENS. That is all a matter of record, Mr. Pecora.

Mr. PECORA. I wanted to see if he knew it.

Senator COUZENS. He is getting it off of the same kind of a sheet that the other witnesses did.

Mr. PECORA. Was the market price of the stock considered by the board or the executive committee on that date when they agreed to sell to Cutten for $30 a share?

Mr. SINCLAIR. I would think so. I was not in the meeting.

Mr. PECORA. Well, you were in the meeting part of the time?

Mr. SINCLAIR. Yes.

Mr. PECORA. Were you not?

Mr. SINCLAIR. Part of the time. A very short time. But I was very sure that they would consider the market.

Mr. PECORA. Now this purchasing syndicate from the inception had in mind that it would sell those 1,130,000 shares to the public at a profit as quickly as possible, did it not?

Mr. SINCLAIR. I think so.

Mr. PECORA. How?

Mr. SINCLAIR. I would say so. That is usually what a syndicate is formed for.

Mr. PECORA. Yes. And that purpose was carried out by April the 16th, 1929, was it not?

Mr. SINCLAIR. Is that correct? [Addressing his associates.]

Mr. PECORA. That is the date, according to the testimony here, that the account was closed and that the syndicate's operation resulted in a profit to it of about 12 million dollars. Now there has been testimony given here that out of that 12 million dollars—plus profit that accrued to that purchasing syndicate—2½ percent of the profit was given to a man named Fitzpatrick. Do you know anything about that?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Who was Fitzpatrick?

Mr. SINCLAIR. President of the Prairie Oil & Gas Co.

Mr. PECORA. Which is a competing company?

Mr. SINCLAIR. It was a competing company as far as production was concerned only.

Mr. PECORA. Wasn't it a competing company in the oil production field?

Mr. SINCLAIR. In the production field; yes, if you call that a competing company. We did not so consider it.

Mr. PECORA. Who caused that 2½ percent to be given to Fitzpatrick?

Mr. SINCLAIR. I understood that Blair & Co. did.

Mr. PECORA. Who?

Mr. SINCLAIR. Blair & Co.

Mr. PECORA. For what reason?

Mr. SINCLAIR. I don't know.

Mr. PECORA. Did you know Mr. Fitzpatrick then?

Mr. SINCLAIR. Very well.

Mr. PECORA. Did you ever have any business controversies with his company in the competitive field?

Mr. SINCLAIR. Controversies?

Mr. PECORA. Yes.

Mr. SINCLAIR. We have had quite some competition, but no controversies with him.

Mr. PECORA. When did you first hear of any proposal to present to Mr. Fitzpatrick 2½ percent of the profits of 12 million dollars?

Mr. SINCLAIR. Well. I should say it was very close to the time that this transaction was made. I could not say whether it was a month afterwards, or 6 weeks, or 3 weeks, or what it might have been.

Mr. PECORA. After what date?

Mr. SINCLAIR. After October 24.

Mr. PECORA. From whom did you first hear of the proposal to give Mr. Fitzpatrick 2½-percent interest in the profits of the syndicate?

Mr. SINCLAIR. From Blair & Co., to the best of my knowledge.

Mr. PECORA. What reason did they advance for it to you?

Mr. SINCLAIR. They did not advance any reason for it to me.

Mr. PECORA. Did you offer any objection to it?

Mr. SINCLAIR. Not at all.

Mr. PECORA. Was the proposal to include Fitzpatrick in the profits ever reduced to written form?

Mr. SINCLAIR. I don't know. It was not to my knowledge, but I imagine it would be with Blair & Co. I was not the manger of this syndicate.

Mr. PECORA. I understand that. Were Blair & Co. the managers

Mr. SINCLAIR. Arthur W. Cutten was, as I understand it.

Mr. PECORA. Mr. Cutten told us that he was the manager, but said that he did not know why Fitzpatrick got this 2½ percent Now, he as the manager did not know, and you as an original participant did not know, Mr. Ruloff Cutten didn't know, although his firm, E. F. Hutton & Co., paid out the profits. And you now say that you first heard of it about a month or 6 weeks after the purchasing syndicate was formed in October of 1928.

Mr. SINCLAIR. I wouuldn't say it was a month or 6 weeks, but I think it was shortly afterward. It might have been 3 weeks or weeks.

Senator COUZENS. What did Mr. Fitzpatrick do for this money? He was not a participant in the syndicate, and so what did he do for it?

Mr. SINCLAIR. I don't know. He didn't do anything for me.

Mr. PECORA. So that the first time you heard that Fitzpatrick was being declared in on the profits to the extent of the percent thereof was then, when you have stated?

Mr. SINCLAIR. Yes.

Mr. PECORA. And you offered no objection to it?

Mr. SINCLAIR. I did not.

Mr. PECORA. It meant a reduction in your share of the profits correspondingly, didn't it?

Mr. SINCLAIR. Which I was very happy at that time to reduce.

Senator COUZENS. In spite of the fact that he was a competitor?

Mr. SINCLAIR. It did not make any difference to me. His company was a competitor in the way I have said, if you consider it that way, Senator.

Mr. PECORA. Why were you happy to see it done?

Mr. SINCLAIR. Because I was promoting the interests of the corporation in trying to sell those shares, in trying to do that, and not trying to make money. I would have been very happy to have given all of my participation away. I came into it to help the corporation. I did not seek it.

Mr. PECORA. You say you did not seek it. Was it offered to you?

Mr. SINCLAIR. I might have suggested it in order to put the thing over.

Mr. PECORA. Did Fitzpatrick play any part in the syndicate operations at all?

Mr. SINCLAIR. Not that I know of.

Mr. PECORA. Then why should he have gotten 2½ percent of the profits?

Mr. SINCLAIR. Mr. Pecora, you will have to ask him. I don't know. You will have to get your information some place else.

Mr. PECORA. Well, I thought I was trying to get it from one of the gentlemen who helped to pay that 2½ percent. You are one of those gentlemen.

Mr. SINCLAIR. I wish I could give it to you. I did not consider at the time the participation was given to me, or I mean I did not know whether there was going to be any pay or not. I was not as enthusiastic about the situation as I might have been.

Mr. PECORA. About what situation?

Mr. SINCLAIR. About the future market situation. That is what this was, really. We were taking a chance really on the market. We made a firm contract for 34 million dollars.

Mr. PECORA. And the day you made the firm contract the market was something like 5 points above the purchase price?

Mr. SINCLAIR. Which would not mean anything, for the next day it might be down 10 points.

Mr. PECORA. But it so happened that the market was 5 points above, wasn't it?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did it ever go below 30 during the operations of the purchasing syndicate?

Mr. SINCLAIR. I do not know, but do not think so. It is my opinion if we had not had a syndicate it might have gone down much lower than that.

Senator COUZENS. And Mr. Fitzpatrick did not take any risk, because he did not take the risk you are now referring to.

Mr. SINCLAIR. I don't think he did.

Mr. PECORA. Was this a gift to Mr. Fitzpatrick?

Mr. SINCLAIR. You may call it what you wish.

Mr. PECORA. What would you call it?

Mr. SINCLAIR. Well, it wasn't Christmas.

Mr. PECORA. What was that?

Mr. SINCLAIR. It was not Christmas. I don't know what you would call it, a gift or what.

Mr. PECORA. It was not Christmas, and so what would you call it?

Mr. SINCLAIR. I call it a participation, and a relief, so far as I was concerned, of that much.

Mr. PECORA. Did Blair & Co. have the right to give to anybody any of your interest as a participant in this purchasing group without your consent?

Mr. SINCLAIR. In the original agreement I think there was something like 10 or 12 percent set aside.

Mr. PECORA. And that 10 or 12 percent was taken up by the other participants, wasn't it?

Mr. SINCLAIR. I don't think so.

Mr. PECORA. Well, let us see about that, Mr. Sinclair. Let me show you committee exhibit no. 114, entitled: "List of Participants in Sinclair Purchasing Syndicate as Finally Constituted, with Percentages and Share of Profits Received."

Will you look at it and see if you recognize from it the names and percentages, respectively, of all the participants in the group as finally constituted?

Mr. SINCLAIR (after looking at exhibit 114 and some other papers). This is the information I had at that time. [Handing a paper to Mr. Pecora.]

Mr. RAGLAND. Mr. Sinclair handed you that paper by mistake, Mr. Pecora. He intended to hand back to you the committee exhibit. You already have a copy of that paper.

Mr. SINCLAIR. He may have a copy of that paper so far as I am concerned.

Mr. PECORA. I will ask the committee reporter to read the question back there.

(Thereupon the question was read as follows:)

> Mr. PECORA. Well, let us see about that, Mr. Sinclair. Let me show you committee exhibit no. 114, entitled: "List of Participants in Sinclair Purchasing Syndicate as Finally Constituted, with Percentages and Share of Profits Received."
>
> Will you look at it and see if you recognize from it the names and percentages, respectively, of all the participants in the group as finally constituted?

Mr. SINCLAIR. I think that is correct.

Mr. PECORA. Well, now, if that is correct then apparently Fitzpatrick assumed no liabilities at all although he received 2½ percent of the profits.

Mr. SINCLAIR. I understand that is correct.

Senator COUZENS. Did you afterwards purchase the Prairie Oil & Pipe Line Co.?

Mr. SINCLAIR. The Prairie Oil & Pipe Line Co. and the Sinclair Co. were consolidated.

Senator COUZENS. How soon after that?

Mr. SINCLAIR. Four years, I think. In March of 1932.

Mr. PECORA. About 3 years afterwards?

Mr. SINCLAIR. Yes, sir; about 3½ years afterwards.

Mr. PECORA. You know that this profit was distributed in April of 1929, and the consolidation of your corporation with the Prairie Oil & Gas Co. was effected in March of 1932, 3 years afterwards.

Mr. SINCLAIR. Three and a half years afterwards.

Mr. PECORA. A little less than 3 years afterwards as a matter of fact.

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. When were the negotiations for that consolidation first commenced?

Mr. SINCLAIR. Those negotiations were off and on, and started perhaps 5 years before they were concluded.

Mr. PECORA. So that while those negotiations were pending Fitzpatrick received this 2½ percent of the 12 million dollars profit, amounting to over $300,000?

Mr. SINCLAIR. I would say so.

Mr. PECORA. With your consent and knowledge?

Mr. SINCLAIR. Yes. Now, the negotiations might have been off at that moment. They were off and on.

Mr. PECORA. And he received this with your consent and knowledge, I say.

Mr. SINCLAIR. Yes.

Mr. PECORA. Did you ask Messrs. Blair & Co. any questions at all concerning the granting of this 2½ percent of the profits of this syndicate to Mr. Fitzpatrick?

Mr. SINCLAIR. I don't think I did.

Mr. PECORA. Were you surprised at the suggestion that the head of a competing company at that time should receive upwards of $300,000 out of the profits of a syndicate in which you were an individual participant?

Mr. SINCLAIR. When he received the participation I did not know that he was going to get $300,000. That came about later.

Mr. PECORA. Well, you knew that whatever the profit was to be he was to get 2½ percent.

Mr. SINCLAIR. If there was going to be any profit, yes.

Mr. PECORA. Was there ever any doubt during the life of that purchasing syndicate that its operations were going to result in a large profit?

Mr. SINCLAIR. Well, I had my doubts about it.

Mr. PECORA. What were they based on, Mr. Sinclair?

Mr. SINCLAIR. Based on the condition of the oil market, on the oil industry, and the market generally.

Mr. PECORA. Well, as a matter of fact, didn't the market itself during that 6 months' period of time, between October of 1928 and April of 1929, when this syndicate account was closed, show generally an upward trend?

Mr. SINCLAIR. It did.

Mr. Pecora. Now, a trading account——

Mr. Sinclair (continuing). I wish I had known it was going to do that, though.

Senator Couzens. May I ask this question at that point: With whom did you negotiate for the purchase or consolidation of the Prairie Oil & Pipe Line Co.?

Mr. Sinclair. The negotiations were carried out by Blair & Co.

Senator Couzens. With whom representing the Prairie Co.?

Mr. Sinclair. Well, I could not answer that. I would imagine Mr. Fitzpatrick was one of the gentlemen.

Senator Couzens. Didn't you participate, being the head of the Sinclair Co.?

Mr. Sinclair. Did I do what?

Senator Couzens. Didn't you participate in the negotiations as the head of the Sinclair Co.?

Mr. Sinclair. I did.

Senator Couzens. Why do you say Blair & Co. did it? What authority did they have to complete the negotiations for the consolidation?

Mr. Sinclair. They did not have authority to complete it. They had authority to negotiate.

Senator Couzens. Did you finally pass upon the terms of the consolidation?

Mr. Sinclair. I did.

Senator Couzens. And Mr. Fitzpatrick for the Prairie Co.?

Mr. Sinclair. Well, I could not say only Mr. Fitzpatrick, but Mr. Fitzpatrick was the president of that company at that time. I would say that he was interested in the negotiations.

Mr. Pecora. Mr. Sinclair, when did you first learn that your attendance before this committee was desired?

Mr. Sinclair (after consulting with his counsel). October 26.

Mr. Pecora. Well, that is a matter of about 2 weeks ago, or more than 2 weeks ago.

Mr. Sinclair. Yes; I would say something like that. I don't know just what day of the week it was.

Mr. Pecora. Have you made any efforts since that time to ascertain why this interest in the profits of the purchasing syndicate was given to Mr. Fitzpatrick?

Mr. Sinclair. I asked Mr. Fitzpatrick.

Mr. Pecora. You did?

Mr. Sinclair. Yes.

Mr. Pecora. Well, when?

Mr. Sinclair. In the last 2 weeks.

Mr. Pecora. Where?

Mr. Sinclair. At Excelsior Springs, Mo.

Mr. Pecora. Were you in a sanitarium there at the time?

Mr. Sinclair. Not in a sanitarium. I was in a hotel, sick.

Mr. Pecora. Did you call over there Mr. Fitzpatrick for the purpose of such discussion?

Mr. Sinclair. No; I did not.

Mr. Pecora. Did he invite himself to your bedside?

Mr. Sinclair. He went from Chicago with me.

Mr. Pecora. He went with you from Chicago to the Springs?

Mr. Sinclair. Yes.

Mr. PECORA. Was he sick, too?
Mr. SINCLAIR. No, sir.
Mr. PECORA. Well, what discussion did you have with Mr. Fitzpatrick about his receiving this 2½ percent interest in the profits?
Mr. SINCLAIR. He told me the story about it.
Mr. PECORA. What was the story that he told you?
Mr. SINCLAIR. The story that he told me was that Blair & Co. said they were going to make him some money, and that it came up through the Rockefellers, as I understood it.
Mr. PECORA. Is that all that he told you?
Mr. SINCLAIR. Well, that is about all that I can remember.
Mr. PECORA. He just simply said that Blair & Co. told him they wanted to make him some money, and that it came up through the Rockefellers. Is that all he told you?
Mr. SINCLAIR. No; it is not.
Mr. PECORA. Did he go to the Excelsior Springs, to which you were repairing for your health, all the way from Chicago with you, just to tell you that?
Mr. SINCLAIR. No. He went because I was ill.
Mr. PECORA. Did he just go there and back?
Mr. SINCLAIR. No; he stayed 2 weeks. I learned it while he was there.
Mr. PECORA. Is that all that he told you about it?
Mr. SINCLAIR. No.
Mr. PECORA. Well, tell us the whole story.
Mr. SINCLAIR. I was trying to remember the story. You want hearsay evidence now, do you?
Mr. PECORA. Well, I want you to tell us——
Senator GOLDSBOROUGH (interposing). Let me ask a question right there: Mr. Sinclair, did he tell you who of Blair & Co. had this talk with Mr. Fitzpatrick?
Mr. SINCLAIR. I think he said Hunter Marston. He might have said Mr. Walker, and I don't want to be sure about that.
Mr. PECORA. Tell us the whole story as he gave it to you about 2 weeks ago.
Mr. SINCLAIR. The story that he gave me was that the Rockefellers were selling some shares to Blair & Co., and that they had said they were going to make him some money, and that he received this money.
Mr. PECORA. Were selling what shares?
Mr. SINCLAIR. He did not say what shares. I think Prairie Oil & Gas Co. shares.
Mr. PECORA. But these profits of 2½ percent did not come out of the sale of any Rockefeller shares, or of any shares of Prairie Oil & Gas Co., did they?
Mr. SINCLAIR. No, sir.
Mr. PECORA. They came specifically out of the profits of 12 million dollars that accrued to your purchasing syndicate?
Mr. SINCLAIR. Right.
Mr. PECORA. What did he say was the story about that?
Mr. SINCLAIR. The story that he told me was that Blair & Co. had said they were going to make him some money.
Mr. PECORA. Without his assuming any risks or liabilities?
Mr. SINCLAIR. Yes, sir. He told me he did not take any risks.

Mr. PECORA. Did he tell you why Blair & Co. were desirous of making him some money without having him assume any risks or liabilities?

Mr. SINCLAIR. He told me that it came through the Rockefeller interests.

Mr. PECORA. Just tell us what he said to you about it. Give us the details.

Mr. SINCLAIR. I cannot remember the details.

Mr. PECORA. You discussed it with him only 2 weeks ago?

Mr. SINCLAIR. Right.

Mr. PECORA. Is your memory so poor?

Mr. SINCLAIR. No; it is very good.

Mr. PECORA. Is that all he told you?

Mr. SINCLAIR. I would say, about all. I mean, there is nothing important that he told me other than that.

Mr. PECORA. It might not be important to you——

Mr. SINCLAIR. It might take 10 minutes or 2 hours to tell it.

Mr. PECORA. How long did it take him to tell you the whole story?

Mr. SINCLAIR. Not very long?

Mr. PECORA. How long?

Mr. SINCLAIR. I did not have my watch.

Mr. PECORA. Approximately how long did it take?

Mr. SINCLAIR. I would say, 5 or 10 minutes.

Mr. PECORA. In that 5 or 10 minutes he must have told you more of the story than you have told us, because what you have told us would take about 15 or 20 seconds. What else did he tell you?

Mr. SINCLAIR. I was trying to give you the important details of the story.

Mr. PECORA. Give us the whole story as he gave it to you 2 weeks ago.

Mr. SINCLAIR. Well, if I remember correctly, I was ill in bed; the doctor would not allow me up. He was associated there with me. He was the vice chairman of our company. He returned from Chicago over to Excelsior Springs with me because I was ill and wanted somebody to go along. That is the reason. We discussed this 2½ percent. If I remember correctly, I told him it was pretty soft for him.

Mr. PECORA. I guess it was, wasn't it?

Mr. SINCLAIR. I thought so; I always did think so.

Mr. PECORA. Go ahead and tell us the story.

Mr. SINCLAIR. If I remember correctly, he told a story of how the Rockefellers were going to be interested in making him some money. He had been with them a great many years. Blair & Co. had assigned to him its percentage.

Mr. PECORA. In order to enable the Rockefellers to make some money for him?

Mr. SINCLAIR. That is what I understood.

Mr. PECORA. Did the Rockefellers have any interest in this purchasing group?

Mr. SINCLAIR. No; but the Rockefellers, I understand, sold Blair & Co. some shares in some other companies.

Mr. PECORA. But the profits out of which he got this "soft thing" of $300,000 came out of the operations of this purchasing group o

which you were a member and which dealt solely in the stock of your company?

Mr. SINCLAIR. I conceded that a number of times this afternoon; yes, sir.

Mr. PECORA. When Fitzpatrick told you 2 weeks ago the story of how he came to get this 2½ percent, he among other things told you as part of the story that the Rockefellers were anxious or desirous of making some money for him. Did it not occur to you that that purpose was not effected by giving him 2½ percent of the profits of this transaction?

Mr. SINCLAIR. The latter part of your question, please?

(The part of the pending question referred to was read by the reporter as above recorded.)

Mr. SINCLAIR. It did not.

Mr. PECORA. It did not?

Mr. SINCLAIR. Certainly not. Did he not receive $300,000?

Mr. PECORA. Not from the Rockefellers.

Mr. SINCLAIR. From Blair & Co.

Mr. PECORA. Did he get it from Blair & Co.?

Mr. SINCLAIR. I think he got it from the syndicate through Blair & Co.

Mr. PECORA. Of which you were a member?

Mr. SINCLAIR. Yes.

Mr. PECORA. And of which Blair & Co. were members?

Mr. SINCLAIR. Yes.

Mr. PECORA. And Blair & Co. had no greater interest in the syndicate than you had originally?

Mr. SINCLAIR. No.

Mr. PECORA. And no greater interest than Cutten had originally?

Mr. SINCLAIR. Correct.

Mr. PECORA. So that Blair & Co. were making him some money at the expense of all the other syndicate participants?

Mr. SINCLAIR. There is no doubt about that.

Mr. PECORA. No doubt about it at all?

Mr. SINCLAIR. No, sir.

Mr. PECORA. So that you were one of the Santa Clauses? This was a Santa Claus syndicate, so far as giving Fitzpatrick $300,000 was concerned?

Mr. SINCLAIR. It sounds a bit like it, doesn't it?

Mr. PECORA. Very much so.

The CHAIRMAN. How did the subject come up? Did you ask him about the 2½ percent?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did you know they were hanging Santa Claus whiskers on you at that time?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. You were willing to wear them?

Mr. SINCLAIR. I did.

Senator COUZENS. You did not even get new dimes from the Rockefellers?

Mr. SINCLAIR. I never have yet. Of course, Senators and Mr. Pecora, this is all hearsay with me. It seems to me that Fitzpatrick should tell this story, and not me.

Mr. PECORA. It would seem that, when he attempted to tell you the story 2 weeks ago and told you, to your knowledge, things that were not in accordance with the facts, you might have questioned him about it.

Mr. SINCLAIR. I was questioning him about it.

Mr. PECORA. Why somebody gave away your money, among other things——

Mr. SINCLAIR. That is what I say.

Mr. PECORA (continuing). To a man who at the time was a competitor of your company.

Mr. SINCLAIR. That is what I say. He gave me his reasons.

Mr. PECORA. He told you that Blair & Co. wanted to make him some money?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. He did not tell you that Blair & Co. wanted to make some money for him at your expense?

Mr. SINCLAIR. I imagine they would if they could.

Mr. PECORA. But in this particular case they were very easily able to do it because of your complete acquiescence?

Mr. SINCLAIR. That is right.

Mr. PECORA. Will you tell me why you acquiesced in that if you did not know any of the facts at that time?

Mr. SINCLAIR. The reason I acquiesced was because they made the request.

Mr. PECORA. Did you ask them for the reason why they wanted to declare Fitzpatrick in on this profit?

Mr. SINCLAIR. I did not.

Senator COUZENS. Mr. Pecora, you live in New York; why don't you apply to Blair & Co.?

Mr. PECORA. I am afraid they might treat me like a stepchild. Were Blair & Co. at that time interested in the negotiations that had been pending off and on for a period of 5 years prior to March 1932, to effect a consolidation between your company and the Prairie Oil & Gas Co.?

Mr. SINCLAIR. I do not think so, at that time.

Mr. PECORA. Were Blair & Co. bankers for your company at that time?

Mr. SINCLAIR. Yes.

Mr. PECORA. As bankers for your company would they not naturally be interested in any pending negotiations to effect such a consolidation?

Mr. SINCLAIR. Yes, they would, naturally; but I do not go to Blair & Co. every time I start any negotiations.

Mr. PECORA. But in this particular instance did Blair & Co. take any part in those negotiations with the Prairie Oil & Gas Co. or its officers or directors?

Mr. SINCLAIR. Not at that time.

Mr. PECORA. When did they?

Mr. SINCLAIR. I do not know; in the latter part of 1930, I think.

Mr. PECORA. When did Blair & Co. first become bankers for the Sinclair Consolidated Oil Corporation or any of its predecessor companies?

Mr. SINCLAIR. A great number of years ago.

Mr. PECORA. A number of years prior to 1928?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And had remained in the relationship of bankers to your company and its predecessor corporations over a period of years prior to 1928?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Including 1928?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Do you know where Fitzpatrick is now?

Mr. SINCLAIR. I think he is in New York.

Mr. PECORA. What is his office address?

Mr. SINCLAIR. 45 Nassau Street. He is vice chairman of our company.

Mr. PECORA. He is vice chairman of your company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. When did you arrive in Washington for the purpose of attending this hearing?

Mr. SINCLAIR. Sunday at 1 o'clock—no; I arrived in Washington last night about 8:30.

Mr. PECORA. Did you meet Mr. Ruloff Cutten last night?

Mr. SINCLAIR. No.

Mr. PECORA. Did you see him today before you came here?

Mr. SINCLAIR. I did.

Mr. PECORA. Did you discuss this subject with him?

Mr. SINCLAIR. I did not.

Mr. PECORA. When did you meet him today before coming to this hearing?

Mr. SINCLAIR. When we were leaving the hotel.

Mr. PECORA. When was that?

Mr. SINCLAIR. Perhaps 10 minutes of 2, or 15 or 12 minutes of 2; I do not know.

Mr. PECORA. You are still the chairman of the Consolidated Oil Corporation?

Mr. SINCLAIR. I am chairman of the executive board.

Mr. PECORA. And as such, Mr. Fitzpatrick is your subordinate?

Mr. SINCLAIR. Yes.

Mr. PECORA. Can you arrange to have him here tomorrow morning?

Mr. SINCLAIR. I will endeavor to, yes. I cannot guarantee that, but I will endeavor to.

Mr. PECORA. Have you any reason to doubt that he would comply with a request from you to come here?

Mr. SINCLAIR. I do not think so, if I can reach him.

Mr. PECORA. May I suggest that you ask one of your associates here to get in touch with Mr. Fitzpatrick now and see if we can have him here tomorrow morning.

(One of his associates left the hearing room at the suggestion of Mr. Sinclair.)

Mr. PECORA. What prompted you, Mr. Sinclair, to give subparticipation in your interest in the purchasing syndicate to the person or persons to whom you gave such subparticipation?

Mr. SINCLAIR. The principal thing was that I would like to make them some money; that is the principal thing—with the exception

of Mr. Whitney. Mr. Whitney was a very large shareholder in the Sinclair Co.

Mr. PECORA. His share of the profits was over half a million dollars, was it not?

Mr. SINCLAIR. $517,790.

Mr. PECORA. Did he ask you for the subparticipation, or did you grant it to him on your initiative?

Mr. SINCLAIR. He asked for it. I was very glad he took it at that time.

Mr. PECORA. Do you know whether or not at any time after you granted these subparticipations to any of these other directors or officers of the Sinclair Consolidated Oil Corporation the fact was made known at any meeting of the board of directors or of the executive committee of that corporation of the granting of such subparticipations?

Mr. SINCLAIR. I do not. I have no recollection of it.

Mr. PECORA. Was any statement ever made to the stockholders of the Sinclair Consolidated Oil Corporation concerning the interest of any of these officers and directors of the corporation in this purchasing syndicate?

Mr. SINCLAIR. I do not think so.

Mr. PECORA. Mr. Sinclair, what individual connected with Blair & Co. told you at the outset that Mr. Fitzpatrick had been declared in on the profits of the purchasing syndicate?

Mr. SINCLAIR. If I remember correctly, I think it was Mr. Elisha Walker.

Mr. PECORA. He is now a partner of Kuhn Loeb & Co.?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Coincidentally with the formation of this purchasing syndicate a trading account or syndicate was formed at the instance of the original participants in the purchasing syndicate?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. For what purpose was that trading syndicate or account formed?

Mr. SINCLAIR. The purpose they told me was to trade in the market.

Mr. PECORA. In the stock of your company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. With a view of enabling the purchasing syndicate to sell to the public at a profit these 1,130,000 shares?

Mr. SINCLAIR. I would say so.

Mr. PECORA. Do you know how that trading syndicate operated for that purpose?

Mr. SINCLAIR. I do not. I am a very poor market operator.

Mr. PECORA. You are not a neophyte in that respect, are you?

Mr. SINCLAIR. No.

Mr. PECORA. You said that the original purpose you had in mind in seeking to sell for your corporation this block of 1,130,000 shares was to raise additional working capital for your company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Had your company paid a dividend up to that time to its common-stock holders?

Mr. SINCLAIR. About 4 years before that.

Mr. PECORA. Did it pay a dividend after this sale was effected?

Mr. SINCLAIR. I will try to get that information for you. [After consulting:] The first dividend was paid in February 1929, and the last one on April 15, 1931.

The CHAIRMAN. How much?

Mr. SINCLAIR. It ranged from 25 to 50 cents a quarter.

Mr. Fitzpatrick reports that he will be here at 10 o'clock.

Mr. PECORA. Thank you. Did Mr. Fitzpatrick remain with you at Sulphur Springs?

Mr. SINCLAIR. At Excelsior Springs; yes. He came back to New York with me.

Mr. PECORA. Have you had, since October 26 last, any conversation with or communication with Arthur W. Cutten on the subject of this transaction?

Mr. SINCLAIR. What transaction? You mean the syndicate or the Fitzpatrick transaction?

Mr. PECORA. This purchase syndicate transaction.

Mr. SINCLAIR. I saw Mr. Cutten in Chicago.

Mr. PECORA. When?

Mr. SINCLAIR. Last Saturday.

Mr. PECORA. At his office?

Mr. SINCLAIR. No; he was at lunch.

Mr. PECORA. Did you discuss this transaction with him?

Mr. SINCLAIR. Not the transaction.

Mr. PECORA. Did you discuss his evidence with him?

Mr. SINCLAIR. Some.

Mr. PECORA. Did you have any discussion with him at that time concerning the payment of this 2½ percent to Fitzpatrick?

Mr. SINCLAIR. I do not think so. I do not remember it if I did. I do not think so. I may have.

Mr. PECORA. Is your memory that poor, that you do not recall a conversation you had last Saturday?

Mr. SINCLAIR. I do not recall all the conversations I have every day.

Mr. PECORA. How long were you with him last Saturday?

Mr. SINCLAIR. I would say, an hour or two hours at lunch.

Mr. PECORA. How was that appointment made at lunch—at your initiative or at his?

Mr. SINCLAIR. Not at my initiative. It was made by Mr. Bartlett. Mr. Bartlett invited me to lunch.

Mr. PECORA. He is a director in your company?

Mr. SINCLAIR. He is.

Mr. PECORA. Living in Chicago?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did you suggest to Mr. Bartlett that you would like to meet Mr. Cutten for the purpose of discussing with Mr. Cutten the testimony which Mr. Cutten had given before this committee last week?

Mr. SINCLAIR. I did not.

Mr. PECORA. Do you know why the appointment was made for you by Mr. Bartlett?

Mr. SINCLAIR. I often go to lunch with him when I am in Chicago.

Mr. PECORA. Do you know why this particular appointment was made for you by Mr. Bartlett?

Mr. SINCLAIR. I do not.

Mr. PECORA. Did Mr. Cutten acquaint you with the testimony he had given last Saturday?

Mr. SINCLAIR. He did not.

Mr. PECORA. Have you read of it?

Mr. SINCLAIR. Only in the newspapers.

Mr. PECORA. With what other members of that syndicate, either original members or subparticipants, have you discussed the matter of the syndicate transaction since October 26?

Mr. SINCLAIR. Elisha Walker and Hunter Marston.

Mr. PECORA. Where did you meet them for that purpose?

Mr. SINCLAIR. At my house.

Mr. PECORA. Great Neck, Long Island?

Mr. SINCLAIR. In New York.

Mr. PECORA. When?

Mr. SINCLAIR. Last Sunday.

Mr. PECORA. Did you arrange for them to meet you there?

Mr. SINCLAIR. I did.

Mr. PECORA. For the purpose of discussing this syndicate operation or transaction?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did you confer with both of them at the same time?

Mr. SINCLAIR. Yes; I think they were both there at the same time.

Mr. PECORA. Was anything then said about any reason why Mr. Fitzpatrick was given this 2½ percent profit?

Mr. SINCLAIR. No, sir.

Mr. PECORA. If you were discussing the subject of this syndicate operation with them, why was it not brought up for discussion among them?

Mr. SINCLAIR. I do not know.

Mr. PECORA. You were anxious to find out, were you not, why Fitzpatrick got that 2½ percent a long time ago.

Mr. SINCLAIR. I was not. He got that 2½ percent a long time ago.

Mr. PECORA. But you were inquiring about the transaction last Saturday and last Sunday 2 weeks ago with Mr. Fitzpatrick himself, among others.

Mr. SINCLAIR. Yes.

Mr. PECORA. Why did you discuss it with these gentlemen at all, in view of the fact, as you just said, he got that money a long time ago?

Mr. SINCLAIR. I didn't discuss the 2½ percent with these gentlemen.

Mr. PECORA. You did with Fitzpatrick?

Mr. SINCLAIR. Yes, he discussed it with me.

Mr. PECORA. And you may have discussed it with Cutten last Saturday?

Mr. SINCLAIR. I don't think so.

Mr. PECORA. Well, you said you don't know one way or the other. You said you may have. You have no recollection whether you did or not?

Mr. SINCLAIR. I have not. As a matter of fact, I am rather sure I did not.

Mr. PECORA. What did you discuss this transaction for with Mr. Cutten last Saturday?

Mr. SINCLAIR. Why did I discuss it with him?

Mr. PECORA. Yes.

Mr. SINCLAIR. He was at lunch at this party's house, and as a matter of fact, I thought his testimony was a joke.

Mr. PECORA. Thought his testimony was what?

Mr. SINCLAIR. More or less of a joke.

Mr. PECORA. More or less of a what?

Mr. SINCLAIR. Joke.

Mr. PECORA. Joke?

Mr. SINCLAIR. Uh, huh.

Mr. PECORA. Did it seem that funny to you?

Mr. SINCLAIR. It did.

Mr. PECORA. What was there funny about it?

Mr. SINCLAIR. The whole transaction was funny.

Mr. PECORA. Which transaction do you mean?

Mr. SINCLAIR. I mean this investigation.

Mr. PECORA. Oh, this investigation is funny?

Mr. SINCLAIR. Yes.

Mr. PECORA. Is it still a subject of amusement to you?

Mr. SINCLAIR. Rather.

Mr. PECORA. Quite a joke?

Mr. SINCLAIR. A little.

Mr. PECORA. Are you testifying because you think this whole thing is a joke?

Mr. SINCLAIR. I am not.

Mr. PECORA. Are you imbued with the spirit that it is a joke in giving your testimony?

Mr. SINCLAIR. I am not. I endeavor to give my testimony as I remember it.

Mr. PECORA. Do you think it is a joke for this committee to inquire into an operation whereby a small group of men engaged in stock market operations in the stock of a company in which some of those men were interested as executive officers and directors and whereby they made, in a period of 6 months' time, something like $12,000,000 profit at the expense of the public? Do you think that is a joke?

Mr. SINCLAIR. I do not.

Mr. PECORA. Well, what is there a joke about this whole thing, as it seems to you?

Mr. SINCLAIR. It seems to me that the evidence as I read it in the paper was perfectly simple and plain.

Mr. PECORA. What?

Mr. SINCLAIR. The evidence before the committee as I read it. There are no facts that I know of that have been in any way concealed.

Mr. PECORA. Well, so far has anybody revealed the reason why Fitzpatrick got this 2½ percent?

Mr. SINCLAIR. I have not been at your committee meeting.

Mr. PECORA. How?

Mr. SINCLAIR. I have not been here before.

Mr. PECORA. Well, so far as you have read?

Mr. SINCLAIR. I have not read about it.

Senator COUZENS. Well, if you have not been here, why do you think it is a joke?

Mr. SINCLAIR. Sir?

Senator COUZENS. Why do you think it is a joke if you have not been here?

Mr. SINCLAIR. My idea of what I thought was a joke, Senator, was Mr. Cutten's testimony, not your meeting. The statement that Mr. Cutten made—that is all I saw.

Mr. PECORA. I thought you said when I asked you specifically if the testimony of Mr. Cutten was a joke, you said no, the whole investigation.

Mr. SINCLAIR. No; I did not mean that.

Senator COUZENS. That is what the record shows.

Mr. SINCLAIR. I would like to have it canceled from the record.

Mr. PECORA. Well, it better stand in the record, because we cannot cancel it. But that is not what you meant then?

Mr. SINCLAIR. That is not what I meant.

Senator COUZENS. A good many people thought Teapot Dome was a joke at one time. I hope that they do not go through the same sentiments during this investigation.

Mr. PECORA. It was a joke, but I do not know yet whom the joke was on.

Senator COUZENS. I think the public do.

The CHAIRMAN. The committee will now take a recess until 10 o'clock tomorrow morning, and Mr. Sinclair will still be on the stand.

Mr. SINCLAIR. You want me at 10 o'clock in the morning?

Mr. PECORA. Yes, sir.

(Accordingly, at 4:15 p.m., the subcommittee was in recess until 10 a.m. of the following day.)

STOCK EXCHANGE PRACTICES

WEDNESDAY, NOVEMBER 15, 1933

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment on yesterday, in the caucus room of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Joseph B. Lynch, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern, and also Albert G. Milbank, William Dean Embree and A. Donald MacKinnon, of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation; Martin Conboy, counsel for Albert H. Wiggin; Arthur M. Boal, counsel for Ruloff E. Cutten; G. T. Stanford, general counsel of the Sinclair Consolidated Oil Corporation; R. W. Ragland, counsel for Mr. Harry F. Sinclair; M. T. Moore of Cravath, de Gersdorff, Swaine & Wood, counsel for Mr. Elisha Walker.

The CHAIRMAN. The subcommittee will come to order. I believe Mr. Sinclair desired to make a statement this morning in connection with his testimony of yesterday.

Mr. SINCLAIR. I thank you, very much.

The CHAIRMAN. You may proceed, Mr. Sinclair.

TESTIMONY OF HARRY F. SINCLAIR—Resumed

Mr. SINCLAIR. There are one or two matters in my testimony of yesterday which I would like to correct. I was asked with what participants other than Mr. Cutten, either original participants or subparticipants, I have had any discussion in reference to the syndicate matter since October 26. In replying I had in mind only original participants or subparticipants and named Mr. Walker and Mr. Marston, both of Blair & Co., Inc., and did not mention Mr. Stanford and Mr. Ragland, who, as the record already showed——

Mr. PECORA (interposing). Mr. Stanford and who else?

Mr. SINCLAIR. Mr. Ragland.

Mr. PECORA. All right.

Mr. SINCLAIR (continuing). Became subparticipants in my participation, and who were present at my apartment Sunday. In addition, at various times, there were present Mr. Fred Wood and Mr. M. T. Moore, of the law firm of Cravath, de Gersdorff, Swaine & Wood, which firm had represented the purchasing syndicate, Mr. Pierce, Mr. Fitzpatrick, and Mr. Ruloff Cutten.

I suggested to Mr. Fitzpatrick that he relate what he had told me at Excelsior Springs in reference to the 2½ percent payment, and although I was not in the room all of the time, I believe he did so to some or all of the persons named. When I was asked yesterday if anything was said about any reason for that payment and replied that there was not, I had in mind anything said about any reason, in the conversations with Messrs. Walker and Marston referred to in the previous question, which was, "Did you confer with both of them at the same time?" If the question was intended to mean, was any reason given by anyone, the answer should be yes; that given by Mr. Fitzpatrick.

Also, I desire to complete the record in reference to a matter that was not fully developed yesterday. The directors to whom I extended a subparticipation in my participation did not know that they were to receive any such subparticipation from me until some time after they voted as directors. I at no time prior to the meeting of the executive committee or the meeting of the board of directors told any director to whom I granted a subparticipation that I would grant him a subparticipation, or directly or indirectly informed him that I intended to extend to him any such subparticipation, or had any discussion referring to the same.

Mr. PECORA. Mr. Sinclair, who is the Mr. Pierce to whom you have referred in the statement which you have just read into the record?

Mr. SINCLAIR. Mr. Pierce is my assistant, Mr. Dan E. Pierce, and his address is 49 Nassau Street.

Mr. PECORA. In this statement that you have just read into the record you have stated as follows:

> When I was asked yesterday if anything was said about any reason for that payment——

Referring to the 2½ percent payment to Fitzpatrick—

> and replied that there was not, I had in mind anything said about any reaso in the conversations with Messrs. Walker and Marston referred to in th previous question, which was: "Did you confer with both of them at the sam time?" If the question was intended to mean, was any reason given by any one, the answer should be yes, that given by Mr. Fitzpatrick.

Well, now, did Mr. Fitzpatrick give any reason, when he was a your apartments in New York City last Sunday afternoon, for hi having received that 2½ percent of the profits of that purchasin syndicate?

Mr. SINCLAIR. I think he did. I am quite sure that he gave it t those gentlemen.

Mr. PECORA. Did he give it to you?

Mr. SINCLAIR. I was not there. I was in and out, but I had hear the same story at Excelsior Springs, as I told you.

Mr. PECORA. What makes you think that he discussed that matte with Mr. Marston and with Mr. Walker, and with any of the othe

gentlemen you now say were present, the reason that he received that 2½ percent of the profits?

Mr. SINCLAIR. I suggested it to Mr. Fitzpatrick, that he tell those gentlemen. But——

Mr. PECORA (interposing). Well, now—but go ahead. I did not mean to interrupt you.

Mr. SINCLAIR (coughing). I am sorry, but I have a very severe cold.

Mr. PECORA. Have you finished your answer?

Mr. SINCLAIR. Yes.

Mr. PECORA. Was the matter of his receiving this 2½ percent of the profits one that came up in the discussion that you had last Sunday afternoon with your friends?

Mr. SINCLAIR. The discussion I had with Mr. Fitzpatrick originally was at Excelsior Springs, some 2 weeks ago.

Mr. PECORA. Did it come up again in any conversation that took place at your home in New York City last Sunday afternoon?

Mr. SINCLAIR. I am quite sure that it did.

Mr. PECORA. Well, you were present?

Mr. SINCLAIR. A part of the time I was not in the room.

Mr. PECORA. Well, do you know what reason Mr. Fitzpatrick gave to Mr. Walker and Mr. Marston and any of the other gentlemen there present for his having received that money?

Mr. SINCLAIR. The only reason I know is what I endeavored to tell you on yesterday, Mr. Pecora.

Mr. PECORA. And that was the reason that you told us yesterday that Mr. Fitzpatrick gave to you at Excelsior Springs about 2 weeks ago?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Why didn't you wait in the room for Mr. Fitzpatrick last Sunday at your home when he told those gentlemen what the reason was so that you might hear it?

Mr. SINCLAIR. I should have been very happy to do so, but I happened to be not very well and I was in and out of the room. I was lying down quite a bit of the time.

Mr. PECORA. Well, did you reenter the room after that?

Mr. SINCLAIR (coughing). What was that? I beg pardon.

Mr. PECORA. Did you reenter the room after Mr. Fitzpatrick told them the reason?

Mr. SINCLAIR. I, perhaps, entered the room while he was telling it, or after it, or during the time, but I did not listen to his explanation about the thing. I had heard it.

Mr. PECORA. Well, was the subject referred to again at any time after that?

Mr. SINCLAIR. At my house?

Mr. PECORA. At your house; yes.

Mr. SINCLAIR. I don't know. Not to my knowledge. Those gentlemen would know more about that than I do.

Mr. PECORA. Are you merely assuming that the reason which Mr. Fitzpatrick gave to those gentlemen at your home last Sunday was the same one that he had given to you at Excelsior Springs?

Mr. SINCLAIR. I assume so.

Mr. PECORA. Well, the reason, as I recall your testimony given on yesterday, that Mr. Fitzpatrick told you in Excelsior Springs 2 weeks ago for his having obtained that money, was because Blair & Co. wanted to make some money for him, wasn't it?

Mr. SINCLAIR. I think that was my testimony.

Mr. PECORA. That is a fair summarization of your testimony, isn't it?

Mr. SINCLAIR. Whatever the testimony was; yes.

Mr. PECORA. What occasion would there have been for Mr. Fitzpatrick telling Mr. Walker, who in 1929 was president of Blair & Co., what reason there was for his getting that money from Blair & Co., if, as a matter of fact, the reason was as he told you, that Blair & Co. wanted to make some money for him?

Mr. SINCLAIR. I suggested to Mr. Fitzpatrick that he do so, that he tell those gentlemen.

Mr. PECORA. Can you tell us why you made that suggestion to Mr. Fitzpatrick on Sunday last?

Mr. SINCLAIR. Well, it is a rather difficult question to give you a reason for.

Mr. PECORA. I did not hear you, Mr. Sinclair.

Mr. SINCLAIR. I beg pardon, but I have a very severe cold which interferes with my voice. I suppose I made it because I wanted those gentlemen to know, and to hear, what Mr. Fitzpatrick had to say about it.

Mr. PECORA. Was it because you questioned Mr. Fitzpatrick's statement to you made at Excelsior Springs?

Mr. SINCLAIR. It was not.

Mr. PECORA. You accepted that as a truthful statement, didn't you?

Mr. SINCLAIR. Yes.

Mr. PECORA. Well, what reason was there for his telling Mr. Walker, formerly of Blair & Co.?

Mr. SINCLAIR. There were other gentlemen there.

Mr. PECORA. What was that?

Mr. SINCLAIR. There were other gentlemen there, that I did wish he would tell.

Mr. PECORA. The other gentlemen there were Mr. Marston, who was also associated with Blair & Co. in 1928 and 1929, wasn't he?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And Mr. Stanford and Mr. Ragland, who are your attorneys?

Mr. SINCLAIR. What was that? I was coughing and did not hear you.

Mr. PECORA. Also Mr. Stanford and Mr. Ragland, who are your attorneys?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And Mr. Moore, the attorney for the members of the purchasing syndicate?

Mr. SINCLAIR. That is right.

Mr. PECORA. That included Mr. Walker's firm at that time?

Mr. SINCLAIR. Mr. Moore is not with Mr. Walker's firm. He is with——

Mr. PECORA (interposing). No; but Mr. Walker at that time was associated with Blair & Co., and Blair & Co. were participants in the purchasing syndicate?

Mr. SINCLAIR. That is right.

Mr. PECORA. So that Mr. Moore was the attorney for Blair & Co. and the other participants in that purchasing syndicate back in 1928 and 1929.

Mr. SINCLAIR. Yes. [After talking to Mr. Ragland.] There has been called to my attention——

Mr. PECORA (interposing). I do not hear you, Mr. Sinclair. I am sorry.

Mr. SINCLAIR. I wish I could speak louder, but the very severe cold I am suffering with interferes with my voice. There has been called to my attention by Mr. Ragland at this moment that when I suggested to Mr. Fitzpatrick to tell the story that he had told me in Excelsior Springs, that the lawyers were there; and Mr. Ragland also suggests that Mr. Walker or Mr. Marston was not there at that moment.

Mr. PECORA. Do you mean that Mr. Marston and Mr. Walker were not at your home on last Sunday afternoon?

Mr. SINCLAIR. No; but at that time, I mean, at the moment that he did it.

Mr. PECORA. At the time when Mr. Fitzpatrick told it, do you mean?

Mr. SINCLAIR. At the time when I suggested that Mr. Fitzpatrick tell it. Mr. Walker came along later, and Mr. Marston, I think, came after dinner.

Mr. PECORA. Well, had you sent for Mr. Walker and Mr. Marston to come there Sunday afternoon?

Mr. SINCLAIR. I had not sent for them, but I had asked them to come.

Mr. PECORA. All right. Were you desirous of discussing with them on Sunday the testimony that had been given here in the past week by Mr. Arthur W. Cutten with respect to the operations of the purchasing syndicate and of the trading account?

Mr. SINCLAIR. I don't think that Mr. Cutten's testimony was discussed at the meeting at all.

Mr. PECORA. Well, was the subject of Mr. Cutten's testimony discussed Sunday afternoon at your home?

Mr. SINCLAIR. I don't think so, but it may have been.

Mr. PECORA. Well, what purpose did you have in mind in asking Mr. Walker and Mr. Marston to come to your home last Sunday afternoon, and also Mr. Fitzpatrick to come there?

Mr. SINCLAIR. It was quite natural as those gentlemen were interested in this syndicate, and——

Mr. PECORA (interposing). Well, did you discuss—I beg pardon, but you had paused and I thought you had completed your answer.

Mr. SINCLAIR. No; I was coughing.

Mr. PECORA. I beg pardon. You may proceed to complete your answer.

Mr. SINCLAIR. I was desirous of discussing with them all about the situation. I knew very little about it, anyway; all that I knew about it was what I had read in the newspapers.

Mr. PECORA. Well, did you discuss the testimony with Mr. Cutten on Saturday in Chicago?

Mr. SINCLAIR. I think I testified that what I discussed with Mr. Cutten—well, I testified to that on yesterday, and I will get my testimony if you wish.

Mr. PECORA. No. Don't you recall now, Mr. Sinclair, what you discussed with Mr. Cutten last Saturday in Chicago at Mr. Bartlett's home?

Mr. SINCLAIR. I will get the testimony.

Mr. PECORA. Don't you recall the testimony that you gave on yesterday, Mr. Sinclair?

Mr. SINCLAIR. I will get the testimony.

Mr. PECORA. Mr. Sinclair, I am asking you a question, please: Don't you recall now the testimony that you gave before this subcommittee yesterday with regard to the conversation you had with Mr. Arthur W. Cutten in Chicago last Saturday?

Mr. SINCLAIR. Do you wish me to repeat that testimony?

Mr. PECORA. No. I haven't asked you to repeat it. Do you recall it?

Mr. SINCLAIR. I recall that I gave testimony on it on yesterday; yes.

Mr. PECORA. Do you recall what testimony you gave on that subject?

Mr. SINCLAIR. I could not say that I do.

Mr. PECORA. Is your memory that poor?

Mr. SINCLAIR. Well, I shouldn't say that.

Mr. PECORA. Well, now, on yesterday you gave certain testimony about a conversation you had on last Saturday with Mr. Cutten in Chicago. Have you forgotten the details of the testimony you gave yesterday on that subject?

Mr. SINCLAIR. Well, I can repeat the testimony by referring to it, but I could not repeat it otherwise. If you will ask me a question and let me refresh my mind I will tell you exactly.

Mr. PECORA. Would you have to refer to the stenographic record of your testimony given on yesterday in order to be able to recall what you then said?

Mr. SINCLAIR. In order to repeat what I then said; yes.

Mr. PECORA. Not to repeat it. What do you mean by repeating it; repeating it verbatim?

Mr. SINCLAIR. Yes. That is what I assume you wish, isn't it?

Mr. PECORA. I haven't asked you anything about repeating that testimony. I simply asked you if you recall it.

Mr. SINCLAIR. I recall testifying.

Mr. PECORA. Do you recall what testimony you then gave?

Mr. SINCLAIR. I will repeat it. [Turning to stenographic transscript.]

Mr. PECORA. No; my question is: Can you recall it without refreshing you recollection?

Mr. SINCLAIR. I cannot.

Senator COUZENS. There is no necessity of his reading over what he testified about on yesterday, is there, Mr. Pecora?

Mr. PECORA. No. Now, Mr. Sinclair, what purpose did you have in asking Mr. Walker and Mr. Marston to come to your home in New York City last Sunday afternoon?

Mr. SINCLAIR. I wished to discuss this syndicate situation, in trying to refresh my mind about the details.

Mr. Pecora. Was there any particular phase of it that you wanted to refresh your mind about?

Mr. Sinclair. Not any particular thing, but I wanted to refresh my mind about the entire thing.

Mr. Pecora. Did you succeed in refreshing your mind about the entire operations of the syndicates?

Mr. Sinclair. I could not say that. I endeavored to refresh my mind as much as possible.

Mr. Pecora. Did you refresh your mind by asking Mr. Walker to tell you why he gave Mr. Fitzpatrick that 2½ percent of the profits?

Mr. Sinclair. I did not.

Mr. Pecora. Didn't you think it was necessary to do it?

Mr. Sinclair. I suggested to Mr. Fitzpatrick that he repeat, or that he tell Mr. Walker what he had told me in Excelsior Springs.

Mr. Pecora. And when Mr. Fitzpatrick proceeded to do that, or before he proceeded to do that, I mean to do that on your suggestion, you left the room while he did it?

Mr. Sinclair. Well, I was in and out of the room.

Mr. Pecora. Do you say you left the room at that particular time?

Mr. Sinclair. Perhaps not at that moment.

Mr. Pecora. At any rate, you were not in the room when Mr. Fitzpatrick, acting upon your suggestion, repeated to Mr. Walker the reason that he understood for his having been given that 2½ percent of the profits?

Mr. Sinclair. I don't think I was.

Mr. Pecora. Now, you utterly failed to ask Mr. Walker for the reason, didn't you?

Mr. Sinclair. I did not ask Mr. Walker for the reason.

Mr. Pecora. And he did not volunteer to give it to you?

Mr. Sinclair. He did not.

Mr. Pecora. Have you since had any communication with Mr. Walker?

Mr. Sinclair. I have not.

Mr. Pecora. Or with Mr. Marston?

Mr. Sinclair. I have not.

Mr. Pecora. Or with Mr. Fitzpatrick?

Mr. Sinclair. I have not.

Mr. Pecora. Now, I will ask if Mr. Fitzpatrick is present in the hearing room. [A pause, without response.]

Mr. Sinclair. Just a moment. [After consulting with his counsel.] I spoke to Mr. Fitzpatrick last night; yes.

Mr. Pecora. What was that?

Mr. Sinclair. I talked to Mr. Fitzpatrick after he came in last night.

Mr. Pecora. At your hotel here in Washington?

Mr. Sinclair. At his hotel; yes.

Mr. Pecora. Did these attorneys, namely, Mr. Stanford, Mr. Ragland, and Mr. Moore, come to your home on Sunday afternoon last on their initiative or upon your request?

Mr. Sinclair. Upon my request.

Mr. Pecora. And what purpose did you have in asking them to do that?

Mr. Sinclair. To discuss this matter.

Mr. PECORA. How long did your discussion with all these gentlemen last on Sunday afternoon?

Mr. SINCLAIR. These gentlemen were at my home, some of them perhaps coming at 5 o'clock and perhaps leaving at 12 o'clock or 1 o'clock, and some of them left and came back, and some of them left and did not come back.

Mr. PECORA. Did any of them say to you, Mr. Sinclair, that you probably would be examined upon your appearance before this committee with respect to the money that was given to Fitzpatrick?

Mr. SINCLAIR. I do not think so.

Mr. PECORA. Was there a copy of the testimony that had previously been given before this committee by other witnesses concerning these two syndicates, the purchasing syndicate and the trading syndicate, at your home last Sunday afternoon?

Mr. SINCLAIR. It was not. I understand Mr. Ragland to say he had one, but I did not.

Mr. PECORA. At your home?

Mr. SINCLAIR. He says so.

Mr. PECORA. Were any references made to it in the course of any conversations that were there held?

Mr. SINCLAIR. Not that I know of.

Mr. PECORA. I will ask that Mr. Fitzpatrick be called to the stand, and I will suspend temporarily with the examination of Mr. Sinclair.

Mr. SINCLAIR. Shall I retire, or shall I stay here?

Mr. PECORA. Just temporarily.

The CHAIRMAN. Just sit anywhere you like.

(The witness was temporarily excused.)

TESTIMONY OF WILLIAM SAMUEL FITZPATRICK, VICE CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CONSOLIDATED OIL CO.

The CHAIRMAN. Do you, Mr. Fitzpatrick, solemnly swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FITZPATRICK. I do.

Mr. PECORA. What is your full name, Mr. Fitzpatrick?

Mr. FITZPATRICK. William Samuel Fitzpatrick.

Mr. PECORA. What is your business?

Mr. FITZPATRICK. Well, I have been in the oil business for a good many years.

Mr. PECORA. What is your present business?

Mr. FITZPATRICK. My present position is vice chairman of the executive committee of the Consolidated Oil Co.

Mr. PECORA. When did you become the vice chairman of the executive committee of that company?

Mr. FITZPATRICK. Very soon after the 1st of April 1932.

Mr. PECORA. Was that shortly after there had been a consolidation effected between the Sinclair Consolidated Oil Corporation and the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. At the time of that consolidation and for some time prior thereto were you associated with the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. I came to the Prairie Oil & Gas Co. in 1908, and continued in one capacity or another with the Prairie Oil & Gas Co. down to the time that it was taken over by the Consolidated.

Mr. PECORA. Were you during any part of that period an officer or director of any other corporation engaged in any phase of the oil business?

Mr. FITZPATRICK. None except a few smaller concerns that were largely owned or that the Prairie Oil & Gas Co. had a large interest in.

Mr. PECORA. Was the Prairie Pipe Line Co. one of them?

Mr. FITZPATRICK. No.

Mr. PECORA. Were you connected with that corporation?

Mr. FITZPATRICK. Not officially.

Mr. PECORA. Were you through any community of interest between the corporations that you were connected with in that corporation?

Mr. FITZPATRICK. No; except that the owners of about 60 percent of the stock in one company owned stock in the other; and in one company, I don't know which one it was, it was 65 percent, about.

Senator COUZENS. Were the Rockefellers interested in the Prairie Co.?

Mr. FITZPATRICK. Both companies.

Senator COUZENS. Both the pipe line and the oil company?

Mr. FITZPATRICK. Yes, sir.

Senator COUZENS. Did they have a controlling interest?

Mr. FITZPATRICK. No, sir.

Senator COUZENS. Do you know the percentage of interest which they had?

Mr. FITZPATRICK. Only approximately. I think they had about 22 or 23 percent of the Oil and about 20 percent of the Pipe.

Mr. PECORA. Does not that represent a management control for all practical purposes?

Mr. FITZPATRICK. I do not know what you mean by "practical purposes", Mr. Pecora.

Mr. PECORA. For purposes of operation of the company.

Mr. FITZPATRICK. The stock represented by the Rockefellers and their friends, the trusts and people that had been formerly associated with the old gentleman in years gone by, or their relatives, had, as I remember it, something like 40 or 42 percent.

Senator COUZENS. Who represented the Rockefellers in the management?

Mr. FITZPATRICK. Well, I don't know that anybody represented the Rockefellers exactly. I came as near it, I presume, as anybody.

Senator COUZENS. You were representing them on the board of directors?

Mr. FITZPATRICK. I was always elected on the board of directors with the proxies that they sent in and the others.

Senator COUZENS. So you were always looked upon as a Rockefeller man?

Mr. FITZPATRICK. I could not say how I was looked upon.

Senator COUZENS. I mean, the testimony indicated yesterday that you had been with the Rockefellers very many years.

Mr. FITZPATRICK. I went with the Prairie Oil & Gas Co. in 1908. I was first employed as an attorney in a suit that was pending in Kansas, brought by the attorney general to forfeit the charter of the Prairie Oil & Gas Co. and the Standard Oil Co. of Kansas, and withdraw or cancel the permit of the Standard Oil Co. of Indiana to do business in the State of Kansas under the antitrust laws of that State. After some 6, maybe 9, months in the progress of that case I was invited to devote my entire time to the Prairie Oil & Gas Co. as its general counsel.

Mr. PECORA. In the midst of this litigation that had been instituted by the State?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you prior to that time represented the State?

Mr. FITZPATRICK. No.

Mr. PECORA. Oh. I misunderstood you.

Senator COUZENS. No.

Mr. FITZPATRICK. I had never represented the State in any capacity.

Mr. PECORA. I misunderstood you.

Mr. FITZPATRICK. I was a practicing attorney in a little country town in Kansas. I was invited to take the position as general counsel for the Prairie Oil & Gas Co., and my service began on the 1st day of August 1908. I continued in that capacity for several years. In 1915 when the Prairie Pipe Line Co. was organized out of a part of the assets of the Prairie Oil & Gas Co., and the stock issued in the Prairie Pipe Line Co. was distributed to the different stockholders of the Prairie Oil & Gas Co. as a dividend, I became vice president of the Prairie Oil & Gas Co. and continued as general counsel for a year or two, until I was able to find somebody that I wanted to take my place and turn the legal affairs of the company over to.

From that time on I was entirely devoted to the business of the Prairie Oil Co.; the Prairie Pipe Line Co. having been created out of the assets of the Prairie Oil & Gas Co. due to a decision of the Supreme Court requiring them to engage in the transportation business as a common carrier, which had not been the original plan or practice, and we did not want the two accountings to get mixed up and thought we had better operate the pipe line as a common carrier in accordance with the law by a separate corporation, and that was done. After that time, down to the close of its business, the Prairie Oil & Gas Co. was by far the largest shipper over the Prairie Pipe Line. They rented offices in our building and our contacts were daily. Our relations were cordial and helpful, and if I had any influence or anything to do with the Prairie Pipe Line Co. it was through those relations, not in any official capacity.

Mr. PECORA. Mr. Fitzpatrick, it was testified to yesterday by Mr. Sinclair that negotiations for the consolidation of the Sinclair Consolidated Oil Corporation and the Prairie Oil & Gas Co. had been pending, on and off, for a period of about 5 years prior to their consummation in March 1932. Does that accord with your recollection?

Mr. FITZPATRICK. March 1932? My recollection is, and I am quite sure it is correct, that early in 1928 some of the trusts to which

Mr. Rockefeller had given stock in the Prairie Oil and Prairie Pipe were about to be wound up, and Mr. Rockefeller's office force, whoever was looking after it, I don't know, decided that it would not be a proper thing for Mr. Rockefeller to acquire those stocks from those trusts, and they sold or, as I understood, had arranged to sell to Blair & Co. those stocks which amounted to about half of what we called and regarded as the Rockefeller holdings in our company.

Mr. PECORA. Were those trusts designated? What were the names of those trusts?

Mr. FITZPATRICK. Oh, the Rockefeller Foundation for Medical Research—I don't remember the names of them; but there were 3 or 4 or 5 of them. They took about half of the Rockefeller influence out of the stock ownership and passed it to hands that I had no connection with, more than just a passing acquaintance with. I was curious to know what it meant to me and to the boys that had worked with me in building this company, more particularly on my own account, because I was reaching an age under the plan for retirement of officers and employees of the company which was adopted before I became an officer of the company or a director, even.

Mr. PECORA. Did you feel that the disposal of those holdings by the Rockefeller trusts imperiled your tenure as an officer of the company?

Mr. FITZPATRICK. I was concerned, and I took the first opportunity—I don't remember when it was; I think it was in February or March 1928—I took the first opportunity I had to inquire, and was told in Mr. Rockefeller's office in New York that these people would probably make a market or find a market for these shares. They did not suppose, I think was the way he put it, that they were permanently investing in those oil companies, and they had arranged with those people to, as they called it, do something for me.

The CHAIRMAN. What do you mean by "those people"? Blair & Co.?

Mr. FITZPATRICK. I meant Mr. Cutler in Mr. Rockefeller's office.

Mr. PECORA. Who told you that somebody connected with the Rockefellers had arranged to do something for you?

Mr. FITZPATRICK. Mr. Cutler told me.

Mr. PECORA. What was his relationship?

Mr. FITZPATRICK. He told me he had done it.

Mr. PECORA. Did he tell you how?

Mr. FITZPATRICK. No; he did not tell me how or what. They were to give me some sort of an interest or a profit or participation in the profits they made in handling this stock, is what I understood it to be.

Mr. PECORA. Which stock are you referring to?

Mr. FITZPATRICK. I am talking about the Prairie stock, the Prairie Oil and the Prairie Pipe. At that time there was no thought, so far as I knew, of a consolidation with Sinclair.

Mr. PECORA. As you recall it, when, for the first time, was there ever any discussion about consolidation with the Sinclair Co.?

Mr. FITZPATRICK. Some months later.

Mr. Pecora. In 1928?

Mr. Fitzpatrick. In the early part of 1928.

Mr. Pecora. Did the Rockefellers do something for you in the manner that you have indicated Mr. Cutler said they would?

Mr. Fitzpatrick. Later on I was talking to Mr. Marston, of Blair & Co., and I don't know whether he brought the subject up or whether I did, but one or the other of us—the subject was talked of and I said, "What do you mean?" He says, "Carry you; have an interest in the profits we make on whatever distribution we make of this stock." Then I said, "What interest? How do you mean?" I am quite sure I explained to him that I did not want to incur any indebtedness; and he said, "No; carry you for a share of the profits." I said, "What share? How?" He said, "I presume, about 10 percent." Then later on I was told, I think, by Mr. Cutler, that they did not know whether the deal with Blair & Co. would go through or not; that they were kind of wobbling on it. They thought they had an understanding and a price fixed, but there was some misunderstanding about it, and that he told them to take it or not, if they wanted to. Later on I learned that they did take it and at a different figure.

Mr. Pecora. Out of what deal were those profits to be realized of which you would be given a 10 percent share?

Mr. Fitzpatrick. Out of whatever share Blair & Co. got of the stock they purchased from the Rockefeller trusts.

Mr. Pecora. Did you ever receive those profits?

Mr. Fitzpatrick. Yes.

Mr. Pecora. From whom?

Mr. Fitzpatrick. From Blair & Co.

Mr. Pecora. Amounting to how much?

Mr. Fitzpatrick. I think the first payment was $130,000 and the next was nineteen something, a year or so later.

Mr. Pecora. Were those profits realized out of any transaction involving purchase by a syndicate of 1,130,000 shares of the capital common stock of the Sinclair Consolidated Oil Corporation?

Mr. Fitzpatrick. Not those.

Mr. Pecora. What is that?

Mr. Fitzpatrick. Not that $130,000.

Mr. Pecora. That was something wholly apart from any profits you received from the operations of a syndicate that was formed to purchase 1,130,000 shares of the Sinclair Co.?

Mr. Fitzpatrick. Apart from the operations of the so-called "Cutten syndicate."

Mr. Pecora. So that the promise made to you by Mr. Cutler some time in 1928, in the early part of that year, in behalf of the Rockefellers, was redeemed when they paid you these profits of around $130,000 out of some deal involving stock of the Prairie Oil & Gas Co.?

Mr. Fitzpatrick. The $130,000 was approximately 2½ percent. They had some settlement to make, and finally paid me a little more; but it was approximately 2½ percent of the profits that were made on the shares of Prairie stock that was purchased by Blair & Co. from the Rockefellers, instead of 10 percent. And the other participation in the Cutten syndicate was arranged without suggestion

from me or without any knowledge on my part until I was asked if I would be satisfied with it; if that would suit me. Now, why they did it you will have to ask them. As far as I was concerned, it was something that I thought Rockefellers had arranged for me in view of the more than 20 years' service I had rendered the company in maintaining its charter rights in the State. I had represented it before every committee of Congress and every legislative or official body that it was attacked by—and it was being attacked.

Newspapers were just as good to it then as they are to me now in this thing. The name " Rockefeller " and the name " Standard Oil " were not real good in Kansas and Oklahoma at that time. But I went along with it for over 20 years, and when we quit it was good; and not only was it good, but we had taken the 10½ million dollars originally invested in those two companies and made of it a property that entitled us to 8 million out of the 14 million shares of the Consolidated stock; and in the meantime we had paid to the stockholders over $225,000,000 in cash dividends. I thought the Rockefellers, knowing that I had helped them all and lived with it day and night for those 20 years and attended to that business and neglected my own to the point that if I were to drop dead my family would not have more than 50 or 60 thousand dollars out of the savings I had made out of my salary at that time, and they wanted to do something for me. That is what they gave me to understand, and that is the way I did understand it and the way I understood it from Blair & Co.

Senator TOWNSEND. Whom do you mean by " they "?

Mr. FITZPATRICK. The Rockefellers—some of them; I do know who. Mr. Cutler was the man I knew.

Mr. PECORA. It is fair to assume that during the 20 years of service you rendered to those oil interests in the Prairie companies that you were compensated for those services currently?

Mr. FITZPATRICK. I was compensated with a salary, sometimes a pretty small salary. When it was disclosed here before some Senate investigation, the salaries that other companies were paying—mine was a mighty small salary compared to those.

Mr. PECORA. How small was it at its highest point?

Mr. FITZPATRICK. $60,000, finally. It started at $4,800.

Mr. PECORA. And went up to $60,000?

Mr. FITZPATRICK. It gradually grew to that, without my ever asking anybody for an advance in salary or a promotion.

Mr. PECORA. Is it also fair to assume that you might have had interests as a stockholder during those 20 years from which you received part of the two hundred and odd millions of dollars that you say was paid out to stockholders?

Mr. FITZPATRICK. Very small. I had a little stock. I didn't own a share of stock until I was elected and went on the board of directors. The company loaned me the money to buy the first two shares that I bought to qualify me as a director.

The CHAIRMAN. What salary do you receive now as vice chairman?

Mr. FITZPATRICK. $58,000.

The CHAIRMAN. What salary does Mr. Sinclair receive?

Mr. FITZPATRICK. I don't know.

Mr. Pecora. Mr. Fitzpatrick, about when were negotiations first commenced, as nearly as you can recall it now, looking toward the consolidation of the Sinclair Co. with the Prairie Co.?

Mr. Fitzpatrick. Some time in the late spring or early summer of 1928. Blair & Co., soon after they got, as I supposed, into it—the stock was not transferred at the time on our records, but my understanding was that they had made arrangements to purchase or had purchased it, but I did not know it. But the question was asked me by either Blair & Co. or Mr. Rockefeller's office, I don't remember which, what I thought of such a consolidation.

Mr. Pecora. Prior to the time when the Rockefeller interests, represented by these trusts, such as the Rockefeller Foundation for Medical Research, disposed of their holdings in the Prairie Oil Co., did Blair & Co. have anything to do with the Prairie Oil & Gas Co. or any of its affiliates?

Mr. Fitzpatrick. No.

Mr. Pecora. Did they have anything to do at that time with the Sinclair Consolidated Oil Corporation; do you know?

Mr. Fitzpatrick. I don't know.

Mr. Pecora. Is it your understanding that Blair & Co., either on behalf of themselves or for clients, purchased the holdings of the Rockefeller trusts in the Prairie companies when those trusts disposed of such holdings?

Mr. Fitzpatrick. It is my understanding that they did, but I had no connection with it other than conversations with the interested parties; but it is my understanding that they did buy that stock.

Mr. Pecora. In other words, they bought the Rockefeller interests?

Mr. Fitzpatrick. Yes.

Mr. Pecora. In the Prairie company?

Mr. Fitzpatrick. Yes.

Mr. Pecora. And out of profits which Blair & Co. made through the purchase of that Prairie Oil stock did they pay you this sum of about $130,000?

Mr. Fitzpatrick. That is my understanding.

Mr. Pecora. How did that operate? How was that any redemption of the promise or assurance that Mr. Cutler had given you in behalf of the Rockefellers that they, the Rockefellers, would do something for you?

Mr. Fitzpatrick. No; it was never suggested that the Rockefellers would do anything for me. It was suggested only that the Rockefellers had asked or suggested or required—I don't know—but had arranged with Blair & Co. to do it.

Mr. Pecora. Did Mr. Cutler tell you that that had been done?

Mr. Fitzpatrick. Yes.

Mr. Pecora. Do you recall anything about the formation of a syndicate some time late in 1928 to purchase 1,130,000 shares of the common stock of the Sinclair Consolidated Oil Corporation?

Mr. Fitzpatrick. I know nothing about it except that I heard these gentlemen talking, that it had been done; that is all.

Mr. Pecora. When did you first learn that it had been done, Mr. Fitzpatrick? For the purpose possibly of enabling you to recall the time, let me say to you that from the evidence before this committee the firm agreement that was entered into between the Sinclair Con-

solidated Oil Corporation and that purchasing syndicate was made on October 24, 1928.

Mr. FITZPATRICK. Well, I know that I had heard about it at that time or about that time. I think I had heard that such a thing was probable, that it was practically arranged some days before it was actually consummated.

Mr. PECORA. At that time, Mr. Fitzpatrick, was the Prairie Oil & Gas Co., of which you were the executive head, as I understand it, a competitor of the Sinclair Co. in the producing field of the oil business?

Mr. FITZPATRICK. We both produced oil and we both sold oil. Sinclair—I don't know whether he ever sold any oil or not, Mr. Pecora, but he had a refinery that used the oil he produced. But we were competitors in the sense of acquiring leases. Our men were out after leases, and, really, I think that after that competition was over there was very little real competition between our companies. There was no community of interest, but Mr. Sinclair did not buy oil from the same properties that we did, same producers, and he did not sell oil or try to sell oil as far as I know to any of the companies that depended on us for supply.

Mr. PECORA. Do you recall in what manner and through what channels you first learned of the negotiations that culminated in the agreement of October 24, 1928, between the Sinclair Co. and this purchasing group?

Mr. FITZPATRICK. As I remember it, Mr. Pecora, at that time we had just begun to talk about our consolidation. We had agreed that we would agree on a yardstick to measure our producing properties, leases, and other properties that we had in the two companies, of the same kind. For instance, the same value on leases in certain localities that the Prairie had; where Sinclair had leases in the same locality, the same yardstick should be used in determining the value of them. The same was true of our producing properties, the production we had; the same basis per barrel or per acre, or if any other basis should be applied. They had refineries and we had none, and we had some gas properties or interests in some gas properties, and they had none. They had ships and we had none. Those things it was agreed should be surveyed and appraised by competent persons employed by mutual consent, and we were to accept their appraisals.

That was as far as it had gotten except to look over the book accounts. I had had my men come to New York, and I think Mr. Sinclair had had his men look at our books, the books of the company, our statement, to see what our book values of our stock were and some information as to how they were arrived at. And this proposition apparently did not affect that at all except there would be $33,000,000 more in the till to operate the consolidated company with when we got through with the consolidation, and in connection with that and the effect that it might have on our future consolidation Mr. Sinclair told me that he was negotiating and expected to make a sale of the unissued treasury stock of the Sinclair Co. and get this money in lieu of it.

Now, that is all the way I knew about it, and that is how I came to know about it and that is all I know about it.

Mr. PECORA. Then was the source of your information Mr. Sinclair?

Mr. FITZPATRICK. I am quite sure it was Mr. Sinclair.

Mr. PECORA. Were you invited to become a participant in the purchasing syndicate?

Mr. FITZPATRICK. No; nothing of the kind.

Mr. PECORA. Did Mr. Sinclair say to you in words or substance that he would like to see you participate in any of the profits that might be derived by the purchasing group?

Mr. FITZPATRICK. Of the Cutten Syndicate? No; nor the other.

Mr. PECORA. He merely told you in connection with conversations he had with you at that time about a prospective consolidation of your companies, that an amount of working capital, an additional amount of working capital was sought to be obtained about that time by his company through the issuance and sale of unissued treasury stock?

Mr. FITZPATRICK. Yes.

Mr. PECORA. To an amount of about 33 million dollars?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Is that right?

Mr. FITZPATRICK. That is right.

Mr. PECORA. Did he tell you anything at all about the details of the transaction whereby he in behalf of his company was to dispose of those shares of stock?

Mr. FITZPATRICK. No. The fact of the business is I do not think I knew that he had done that until I read it in the newspapers out at Excelsior Springs.

Mr. PECORA. You mean recently?

Mr. FITZPATRICK. Yes.

Mr. PECORA. It developed very recently?

Mr. FITZPATRICK. Yes; as it developed in the testimony.

Mr. PECORA. And did you read it by way of references to testimony which had been presented to this committee?

Mr. FITZPATRICK. I think Mr. Cutten's testimony gave a list of some participants in that syndicate, and it was published in the Kansas City papers or Chicago papers and I read it there, and that is the first I knew that these other people connected with the Sinclair Co. had anything to do with it or who the actual participants in the syndicate were.

The CHAIRMAN. What was your attitude as an officer of the Prairie Co. toward the consolidation or proposed consolidation with the Sinclair Co.?

Mr. FITZPATRICK. I was at all times favorable to the consolidation, and I had what to me was a very good reason. I would be glad to explain it to the committee if they would care to hear it.

Mr. PECORA. Well, I will come to that eventually. When did you first hear that you were to receive any share of profits which were made by that purchasing syndicate that you now know was formed at that time to buy the 1,130,000 shares of the stock of the Sinclair Co.?

Mr. FITZPATRICK. Some 3 or 4 weeks or a month after the sale had been made.

Mr. PECORA. And who first spoke to you on that subject at that time?

Mr. FITZPATRICK. I think it was Mr. Walker and Mr. Tinker.

Mr. PECORA. Mr. Elisha Walker was then the president of Blair & Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And what relation did Mr. Tinker bear to the transaction so far as you can recall?

Mr. FITZPATRICK. I think he was a participant in the syndicate.

Mr. PECORA. Did they tell you at that time that they were participants in the syndicate that had been organized to purchase this Sinclair stock?

Mr. FITZPATRICK. I am quite sure that they did. I don't remember just what language they employed, but I was given in some way to understand that they were participants in that syndicate—yes; and that they—somebody—had arranged that I should have 2½ percent, along with the 2½ percent in the other syndicate, in lieu of the 10 percent that had been talked of between Mr. Marston and me. Now, how they arranged that I never asked. Nobody ever told me. Why they passed that on to the other syndicate I do not know.

Frankly, gentlemen, I regarded the opportunity to share in those profits as a very fine thing for the Rockefellers to do or arrange for me on account of the services I had rendered, and I had no other idea about it, and I did not care whether it was 300,000—I had no idea it would be anything like that amount of money. I never dreamed that it would be anything like that amount of money. And I did not care how much it was or how it was divided or who got the rest of it or anything about it. I was taking it and making very little inquiry about it.

Mr. PECORA. Did you feel at that time that the Rockefeller interests were under some kind of obligation, moral or otherwise, to give you something additional to the salary you had received for your 20 years' service?

Mr. FITZPATRICK. I did not. I knew that Mr. Rockefeller, according to the press, was giving millions of dollars away to this thing and that thing, and I thought it was a very nice and lovely thing for Mr. Rockefeller to remember a faithful employee, as he seemed to be remembering me.

Mr. PECORA. Now, when Mr. Blair and Mr. Tinker first spoke to you about giving you something out of profits which they expected to make as members of a purchasing syndicate to buy stock from the Sinclair Co. did you consider that they were representing the Rockefeller interests?

Mr. FITZPATRICK. No.

Mr. PECORA. Did you consider that they owed you any obligation whatsoever to give you any moneys, any share of moneys that they made by way of profits or otherwise in any business transactions?

Mr. FITZPATRICK. None whatever, and the thought never occurred to me that they were undertaking or had in mind the imposition of any obligation on me.

Mr. PECORA. No; not an imposition of an obligation on you, but a repayment of an obligation that they might have owed you, morally or otherwise.

Mr. FITZPATRICK. They did not owe me anything. That is one reason why I was so careless, if you please, about inquiring into

their business or how they made this money or where it came from or what they did with this stock.

Mr. PECORA. Did you know of any reason whatsoever why Blair & Co. or Mr. Walker and Mr. Tinker, who then were associated as I recall it with Blair & Co., should have given you any participation in any profits of any kind whatsoever that they had made or were going to make?

Mr. FITZPATRICK. None whatever, except that Mr. Cutler and Mr. Rockefeller's office had told me he had requested them to do that, and Mr. Marston and Mr. Walker seemed to have consented to it and were carrying that out.

Mr. PECORA. When did you get the final payment that went to make up this sum of about $130,000 that you say you received from Blair & Co. out of some profits they made in the purchase of Prairie Oil stock?

Mr. FITZPATRICK. In 1930.

Mr. PECORA. In 1930?

Mr. FITZPATRICK. Yes; the last of 1930.

Mr. PECORA. When did you receive the first payment out of those profits?

Mr. FITZPATRICK. Some time in 1929.

Senator TOWNSEND. What position did Mr. Cutler occupy, Mr. Fitzpatrick?

Mr. FITZPATRICK. Senator, I do not know what it was. If he had any title I do not know what it is, but he is there and it was he who always asked me how much cash we had and how our business was getting along when I saw him.

Senator TOWNSEND. Does he still occupy the same position now?

Mr. FITZPATRICK. So far as I know he does.

Mr. PECORA. When were these profits made by Blair & Co. out of their transactions in Prairie Oil & Gas Co. stock?

Mr. FITZPATRICK. When were they made?

Mr. PECORA. Yes.

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Your first conversation on the subject was sometime early in 1928, as I understood you before?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you did not receive any——

Mr. FITZPATRICK (interposing). They must have been made in '29 or the latter part of '28. I don't know when they were made. I did not get it until early in the summer of 1929, and I know it was early in the summer, because in August of that summer I took a long trip through the western mountains and it was some time before I started on that trip.

Mr. PECORA. Did you consider that the moneys that you then received out of profits from the Prairie Oil stock transactions that Blair & Co. had made were given to you in fulfillment of what Mr. Cutler had told you in the early part of 1928 the Rockefellers would do for you?

Mr. FITZPATRICK. I certainly did.

Mr. PECORA. Did you thank the Rockefellers for it?

Mr. FITZPATRICK. I did.

Mr. PECORA. By letter?

Mr. FITZPATRICK. No.

Mr. PECORA. Whom did you thank?

Mr. FITZPATRICK. Mr. Cutler.

Mr. PECORA. And did he accept the thanks in the supposition on your part that he or the Rockefeller interests had paid you those moneys?

Mr. FITZPATRICK. I gathered from the way he accepted my thanks that he was very delighted, very glad that I was pleased with the arrangement and that it was profitable to me.

Mr. PECORA. Now tell us all that you recall concerning what either Mr. Walker or Mr. Marston or Mr. Tinker said to you about giving you a share of profits which they hoped to realize as members of the purchasing syndicate by this large block of stock from the Sinclair Co.

Mr. FITZPATRICK. Well, I don't remember any particular conversation, except that Mr. Walker always seemed to know, take that for granted, seemed to understand that I was to have something out of it. I had only two conversations with Mr. Marston that I have been able to recall since this matter came up here. Once when we were talking about his promising Mr. Cutler to take care of me, as they called it, in which he said—and I asked him what he meant by taking care of me and he said "Carry me for an interest", and I said, "What interest?" and he said "10 percent", as I remember it. I am quite sure I am right about it.

And then I was told that I was to be carried for a 2½ percent interest in both the syndicates, and I met Mr. Marston one day in his office and jokingly asked him how he came to cut it down from 10 to 2½, and he said, "Well, it gives me a better play", and I think he used the word "play", because one syndicate might flop, another syndicate might make some money, and that the 2½ in the whole thing if it all went good was about what my participation in the one would be.

Mr. PECORA. Did you understand from what Marston or Walker or Tinker told you about the purchasing syndicate in the Sinclair stock that the Rockefeller interests had anything to do with that syndicate?

Mr. FITZPATRICK. I understood they did not have anything to do with the Sinclair syndicate.

Mr. PECORA. Then why did you think, or did you think that you were morally or otherwise entitled to receive any share of the profits that accrued to interests other than the Rockefeller interests from the Sinclair purchasing syndicate?

Mr. FITZPATRICK. I did not consider that I was morally or otherwise entitled to participate in the Sinclair syndicate, but I supposed that Blair & Co., in the keeping of their promise to Mr. Rockefeller's representative, had decided to do it that way. There was no moral obligation. There was no expectancy that I could see why I should participate in the Sinclair syndicate, and I did not participate in it except when Blair & Co. handed me the checks or the money for that participation I took the $200,000 of it and went and paid a note and left $100,000 of it on deposit with them.

Mr. PECORA. The amount you received was something over $300,000, was it?

Mr. FITZPATRICK. What is that?

Mr. PECORA. The amount you received out of the profits accruing to the purchasing syndicate in the Sinclair stock was something over $300,000?

Mr. FITZPATRICK. I think it was.

Mr. PECORA. It was slightly in excess of that?

Mr. FITZPATRICK. I think it was exactly 300. I am not quite sure, but that is my recollection.

Mr. PECORA. Did any of those gentlemen tell you the nature of the syndicate, the purchasing syndicate for the Sinclair stock, or give you any of the details?

Mr. FITZPATRICK. No.

Mr. PECORA. Give you any information at all about it?

Mr. FITZPATRICK. No. I never got any information about the details of it or the contract or anything that was in the contract until several years later.

Mr. PECORA. You knew that the profits were going to be made in transactions dealing with the Sinclair Co. stock?

Mr. FITZPATRICK. I understood that on the part of these people the purpose of the purchase was to make some money.

Mr. PECORA. By trading in the stock of the Sinclair Co.?

Mr. FITZPATRICK. Well, I presumed so. Nobody told me that, but I presumed it. I did not know much about trading. I never had an account, a trading account with a broker, in my life. I never had bought any stock that I did not want my banker to buy through his broker, when I had money enough to pay for it.

Mr. PECORA. You mean to say that nobody told you that this purchasing syndicate was to deal in the stock of the Sinclair Co. when you were first told by anybody that you were to receive a share of the profits therefrom?

Mr. FITZPATRICK. Oh, there was—I don't mean to say nobody told me that. My understanding was that they would, but I cannot say that anybody told me that way.

Mr. PECORA. Was it your understanding that the profits were to be realized out of transactions in the common stock of the Sinclair Co.?

Mr. FITZPATRICK. Sure. Sure. So far as I knew, that was all that was involved in the deal.

Mr. PECORA. You may or may not know it, but Mr. Sinclair yesterday referred to your receiving that $300,000 as a "pretty soft thing." You would not dispute him in that respect, would you?

Mr. FITZPATRICK. I certainly would not. [Laughter.] I so regarded it myself.

Mr. PECORA. Have any other "soft things" of that same character come your way?

Mr. FITZPATRICK. Never have.

Mr. PECORA. You accompanied Mr. Sinclair to Excelsior Springs from Chicago some 2 or 3 weeks ago, didn't you?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you remained with him there for a period of about 2 weeks?

Mr. FITZPATRICK. I remained with him there until he left. We got in there on Saturday and we left Friday, I think.

Mr. PECORA. The following Friday?

Mr. FITZPATRICK. No; week from the following Friday.

Mr. PECORA. During that time did you discuss with him the testimony given by Mr. Arthur W. Cutten before this committee just prior to your going to Excelsior Springs with Mr. Sinclair?

Mr. FITZPATRICK. I think I did. We talked about it. We had the papers there and read about it, and then I think he told me that Mr. Stanford, his attorney, called him up and told him that you folks were raising hell about it. [Prolonged laughter.]

Mr. PECORA. Well now, after Mr. Stanford gave you that interesting bit of information did you get into a huddle with Mr. Sinclair about Mr. Cutten's testimony and our hell-raising?

Mr. FITZPATRICK. No. We did not get into a huddle. Mr. Sinclair was a very sick man when he went there, and from day to day I went to his room and we talked about it. No huddle on it at all. We were there together, and when I learned that somebody was raising hell about me I suggested that I get on the train and come down here and see what it was all about, and Mr. Sinclair was running a temperature at that time, the doctor said it would be very dangerous for him to leave, and he says, "I will go to", and I said, "No, you can't go. You stay here and get well. Get yourself on your feet before you go." And I stayed with him.

Mr. PECORA. Did you indicate to anybody connected with the committee that you would come in here to testify?

Mr. FITZPATRICK. No; I did not indicate to anybody. I arranged to get copy of Mr. Cutten's testimony and thought I would look that over before I made up my mind that there was anything for me to shoot about.

Mr. PECORA. Did Mr. Cutten's testimony enlighten you very much about the transaction?

Mr. FITZPATRICK. I have not read it yet. [Laughter.]

Mr. PECORA. When did you get it?

Mr. FITZPATRICK. Well, it was to have reached my office yesterday, but when I got word to come over here it had not arrived.

Mr. PECORA. Did you discuss or did you tell Mr. Sinclair while you were out at Excelsior Springs with him the circumstances under which you understood you got that $300,000?

Mr. FITZPATRICK. I think I told Mr. Sinclair just exactly what I told you gentlemen and every bit of it.

Mr. PECORA. About in the same detail as you told us this morning?

Mr. FITZPATRICK. About in the same detail and just about the same amount.

Mr. PECORA. That is all, Mr. Fitzpatrick.

Mr. FITZPATRICK. Now, I am not testifying by advice of counsel, but Mr. Stanford called my attention to something he says is a discrepancy in my testimony. If it is I want to—this note is handed me: "At one place in your testimony you said that Rockefellers were selling their interests in the Prairie Oil & Gas Co., and the Prairie Pipe Line Co." Now, if I said that I meant that they were selling these trusts that——

Mr. PECORA (interposing). I think you made that clear.

Mr. FITZPATRICK. I meant that they were selling the shares that were held by these trusts they were looking after and responsible

for and created. The stock that Mr. Rockefeller held in the Prairie Oil & Gas Co., 254,000 shares at that time, was not disturbed at all, and I was told at their office that they did not intend to dispose of them.

The CHAIRMAN. That afterwards went into the Consolidated arrangement with the Sinclair?

Mr. FITZPATRICK. Yes. That afterwards went into the Consolidated, along with some additional shares. I do not remember how many.

The CHAIRMAN. How much stock do you own in the Consolidated?

Mr. FITZPATRICK. How much stock do I own now in the Consolidated Oil Co.?

The CHAIRMAN. Yes.

Mr. FITZPATRICK. Ten thousand shares.

Mr. PECORA. Mr. Fitzpatrick, when did you first become a stockholder of the Sinclair Consolidated Oil Corporation?

Mr. FITZPATRICK. About 1929. I arranged for some stock in the Consolidated Oil Co. in 1928.

Mr. PECORA. To what extent?

Mr. FITZPATRICK. I think it was about 9,000 shares.

Mr. PECORA. Did you acquire it in 1928?

Mr. FITZPATRICK. I bought it in 1928 from this syndicate.

Mr. PECORA. From which syndicate?

Mr. FITZPATRICK. From Mr. Walker and Mr. Tinker. I understood it was to be some of this syndicate stock.

Mr. PECORA. That is, some of the stock which the purchasing syndicate bought directly from the Sinclair Co. in 1928?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Some of this 1,130,000 share block?

Mr. FITZPATRICK. Yes.

Mr. PECORA. At what price did you acquire those 9,000 shares?

Mr. FITZPATRICK. $30.

Mr. PECORA. At $30?

Mr. FITZPATRICK. Yes; and I paid for it with Prairie Oil & Gas Co. stock at $50.

The CHAIRMAN. That had nothing to do with that $200,000 note?

Mr. FITZPATRICK. No connection with it at all.

Mr. PECORA. Did you dispose of those 9,000 shares, if that was the number of Sinclair Consolidated Oil Corporation stock, at any time during the following year?

Mr. FITZPATRICK. No. I bought more Sinclair during the following year, and did not dispose of any of it until 1930. I sold 4,000 shares in 1930 because I needed it. My income tax on this $400,000 was so very much I had to sell something to pay it.

Mr. PECORA. Did you have any controversy or contention with the Internal Revenue department in 1929 concerning this transaction whereby you acquired these 9,000 shares of the Sinclair Corporation?

Mr. FITZPATRICK. I have a case now pending before the Board of Tax Appeals, where they insist that I owe the Government some $6,000 to $8,000, because the stock that I arranged to buy in 1928 with Mr. Walker and Mr. Tinker was not actually delivered until 1929, and they claim that the Prairie stock which I traded for it—they know what that cost me. They claim that I made a profit on

the disposition of that Prairie stock because at the date that the banker with whom my shares were deposited as collateral actually accomplished the exchange, the stock was selling for $39 a share.

Mr. PECORA. That was the Sinclair stock?

Mr. FITZPATRICK. Yes. The Sinclair stock was selling for $39 a share, and they say that was the market value of that stock in the transaction dated that date, and it had no relation to the agreement in 1928, when the exchange was agreed on, and that, therefore, I owe the Government some tax, and we are fighting about that.

Mr. PECORA. Was it $39 a share or $42 a share that the Internal Revenue Bureau claimed the Sinclair stock was worth?

Mr. FITZPATRICK. $39.

Mr. PECORA. Was it your contention that that $39 was not its true value, because that value and been created in the market by manipulation?

Mr. FITZPATRICK. My contention—my suspicion is very largely that way.

Mr. PECORA. Did you so inform the authorities of the Internal Revenue Department?

Mr. FITZPATRICK. I informed the authorities in the Internal Revenue Bureau that it was a firm price that I paid for that stock. I am quite sure Mr. Walker and Mr. Tinker would have sold me this stock at that price.

Mr. PECORA. At $30?

Mr. FITZPATRICK. At $30. But I did not have the money to pay for it, and I did trade the Prairie stock for it on that basis, 3 shares of Prairie for 5 shares of Sinclair.

Mr. PECORA. Consolidated?

Mr. FITZPATRICK. Sinclair, it was at that time—Sinclair Consolidated.

Mr. PECORA. How was this price of $30 a share fixed between you and the gentlemen from whom you bought those 9,000 shares?

Mr. FITZPATRICK. They said that that is what they were paying for it, and they would pass it on to me. I have contended with the Internal Revenue Department that the sale of a block of 1,000,000 shares to a man who had the money and was willing to pay that much for it, $30 a share for it—a sale made by a corporation and approved by its board of directors, that knew all about the value of its stock, was better evidence as to the value than the up and down fluctuations on the market.

Mr. PECORA. I understood you in the course of your testimony before to say that you did not learn any of the details of the purchase of that block of 1,130,000 shares by the purchasing syndicate until long after.

Mr. FITZPATRICK. My dear sir, I said in the beginning that I did learn that $30 a share was the price at which that stock was sold, because that entered into the question I was considering, and the only question I was considering, as to how much money would be in the Sinclair till when we got hooked up with them.

Mr. PECORA. Then the following year, 1929, when the exchange was effected by the actual delivery to you of the Sinclair stock, the revenue authorities sought to assess a tax upon you on the theory that you had made a profit upon that exchange of your Prairie Oil stock

for the stock of the Sinclair Co., and that the Sinclair Co.'s stock had a value of $39 a share instead of $30.

Mr. Fitzpatrick. That was their contention.

Mr. Pecora. That was their contention?

Mr. Fitzpatrick. Yes.

Mr. Pecora. And your reply, among other things, to that contention was that the $39 valuation was not a true valuation because it had been established as a result of market manipulation, or words to that effect.

Mr. Fitzpatrick. Of course, Mr. Pecora, I had no idea that this was the trial of my tax case.

Mr. Pecora. But I am asking now what you told the Internal Revenue authorities about the price of $39 a share being, not the true value, but the result of market manipulation. This is specifically an inquiry into that, among other things.

Mr. Fitzpatrick. I told them that it was wrong. I told them in the first place, that the price at which I got that stock was fixed just as firmly by the agreement between us as anything could be fixed. The exchange could not be made at that particular day because I do not know whether they had the stock. I do not know whether it had been issued to them by Sinclair or not, but they did not have it with them, and I did not have the stock with me that I was exchanging for it, and I had to go to my banker when I found out where they wanted the exchange accomplished, and I was directed to send my shares to Blair & Co., and they would effect the exchange. I went over across the street to the bank and told my banker what I had done, and that I wanted him to do it. He comes along on the 1st of February, as the record shows, with a letter to Blair & Co. asking them to make the exchange as per my directions, and the exchange was made, I think, on the 28th of February. In the meantime the market was going up and down, and I insisted, and am insisting, and shall insist that the 1,000,000-share transaction, at the time I was making my trade, is better evidence as to the value of that stock than the way they handle things on the New York Stock Exchange.

Mr. Pecora. But didn't you tell the revenue authorities specifically, and in substance, that the market valuation of $39 a share which they assumed was the value of that Sinclair stock that you received in exchange for your Prairie stock, was not to be accepted and should not be accepted as the actual value of the stock, because that valuation, that market valuation of $39 a share, had been established by means of the Cutten pool and its market manipulations?

Mr. Fitzpatrick. If I put that argument forward, it was an argument. I was not under oath.

Mr. Pecora. Did you make that argument?

Mr. Fitzpatrick. I don't know whether I did or not. I think possibly I did.

Mr. Pecora. What prompted you to make that argument? Did you believe that the market price of $39 a share was out of line with the true value, and represented simply an artificial value created or established by market manipulations?

Mr. Fitzpatrick. I have the impression, as everybody does who knows nothing about it, that stocks are rigged on the New York Stock Exchange, but I do not know anything about it.

Senator COUZENS. Haven't you learned something about it since hearing about Mr. Cutten's testimony?

Mr. FITZPATRICK. I don't believe everything I hear.

Senator COUZENS. Neither do we. Are the Rockefellers interested in the Sinclair Oil?

Mr. FITZPATRICK. It is my understanding that they are, when it came to voting in the stockholders meetings of the Prairie Oil & Gas Co. to approve this consolidation. I voted their shares for the consolidation.

Senator COUZENS. Who votes their shares in the Consolidated Co.?

Mr. FITZPATRICK. Whoever the committee happens to be. They send out proxies, naming them in the proxies they send out.

Senator COUZENS. The Rockefellers send in their proxies to the nominees fixed by the directors?

Mr. FITZPATRICK. They have. I have been there, I think, at one or two meetings.

Mr. PECORA. That is all.

TESTIMONY OF ELISHA WALKER, A MEMBER OF THE FIRM OF KUHN, LOEB & CO.

The CHAIRMAN. Mr. Walker, you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God?

Mr. WALKER. I do.

Mr. PECORA. Will you please give us your full name, Mr. Walker?

Mr. WALKER. Elisha Walker.

Mr. PECORA. Your residence and business address?

Mr. WALKER. 52 William Street, New York City, is my business address; 33 East Sixty-ninth Street is my residence.

Mr. PECORA. What is your business, Mr. Walker?

Mr. WALKER. Investment banking.

Mr. PECORA. Are you now a member of any investment banking firm?

Mr. WALKER. I am a member of Kuhn, Loeb & Co. at present.

Mr. PECORA. How long have you been a member of that firm?

Mr. WALKER. Since the first of this year.

Mr. PECORA. Prior to that, were you connected with any other banking firm or corporation?

Mr. WALKER. With Blair & Co. and Blair & Co., Inc.

Mr. PECORA. In the year 1928, were you connected with Blair & Co., Inc.

Mr. WALKER. Yes, sir.

Mr. PECORA. In what capacity?

Mr. WALKER. As president.

Mr. PECORA. They were bankers? That was a banking firm?

Mr. WALKER. Dealers in investment securities.

Mr. PECORA. Were you also in that year a director of a corporation called the Sinclair Consolidated Oil Corporation?

Mr. WALKER. Yes, I believe so.

Mr. PECORA. How long had you been a director of that corporation?

Mr. WALKER. I would say several years.

Mr. PECORA. Were you also in that year a member of the executive committee of the board of directors of that corporation?

Mr. WALKER. Yes.

Mr. PECORA. Do you recall a transaction whereby the Sinclair Consolidated Oil Corporation sold to a purchasing group a block of 1,130,000 shares of its capital common stock for $30 a share?

Mr. WALKER. Yes.

Mr. PECORA. According to evidence here, the agreement under which that transaction was consummated was entered into on October 24, 1928.

Mr. WALKER. Yes.

Mr. PECORA. Have you a recollection of that?

Mr. WALKER. I have.

Mr. PECORA. How long before that date did you first learn of any negotiations having been instituted looking to the making of that sale?

Mr. WALKER. If you mean preliminary talks, I would say possibly a couple of months. If you mean definite negotiations, I would say a comparatively short time before the final trade was made.

Mr. PECORA. Who undertook the preliminary negotiations?

Mr. WALKER. Mr. Sinclair; H. F. Sinclair.

Mr. PECORA. Were you cognizant of them currently?

Mr. WALKER. I presume I knew in general, as a director of the corporation.

Mr. PECORA. Had the matter been discussed at a meeting of the directors of the corporation at that time?

Mr. WALKER. I presume it was discussed informally at the meetings.

Mr. PECORA. Along what lines? What was the substance of the discussions?

Mr. WALKER. Along the lines of the advisability of raising additional capital for the corporation through the sale of common stock. At that time the company had substantial bond issues, and it was spending a lot of money, and it was thought advisable to raise additional capital to strengthen it.

Mr. PECORA. In those preliminary, or rather informal discussions, was anything said by any of the officers or directors to you, or by you to any of them, concerning the method that should be followed in issuing and selling that stock for the purpose of getting additional working capital?

Mr. WALKER. You mean the method of sale?

Mr. PECORA. Yes.

Mr. WALKER. Oh, yes; that was discussed.

Mr. PECORA. What was said on that?

Mr. WALKER. It was considered—Mr. Sinclair desired to get a price of $30 for the stock. He was very insistent, as I remember it, that $30 must be paid. The stock was not selling at $30. It was selling under 30, and I can remember saying "You are going to have a very hard job finding purchasers for it." He said, "I will find them", and eventually this transaction resulted from that.

Mr. PECORA. Blair & Co., of which you were then the president, proved eventually to be one of the purchasers at $30 a share?

Mr. WALKER. Yes.

Mr. PECORA. In these informal preliminary discussions among the directors, of which you were one, when Mr. Sinclair insisted that the sale be made for the price of $30 a share, was it your opinion or feeling that the price of $30 a share represented the true or intrinsic value of the stock?

Mr. WALKER. When you talk about true or intrinsic value, it depends upon whether you mean the price the public puts upon it, which, after all, in my opinion is the value of a stock——

Mr. PECORA. Any price the public puts on it represents the value of a stock?

Mr. WALKER. In general.

Mr. PECORA. That is your opinion generally about securities values?

Mr. WALKER. In general.

Mr. PECORA. Then you must have felt that if the price of the stock fixed by the public in that manner was under $30 a share, that Mr. Sinclair's estimate of the value of the stock was excessive.

Mr. WALKER. I did at the start, undoubtedly.

Mr. PECORA. When did you change your opinion about that, if you did change it?

Mr. WALKER. The stock, as you know from the record, gradually advanced over that period of time, and it got up to around $30 a share, and Mr. Sinclair told me he had Mr. Cutten interested in buying this block of stock, and he was very anxious to sell this block of stock, but frankly, at the time I thought we were taking a very great risk when we went in and bought as one of the participants that 1,130,000 shares of stock.

Mr. PECORA. You mean you thought you were taking a great risk of losing because you were paying too much?

Mr. WALKER. I thought it was a very material risk in that respect; yes.

The CHAIRMAN. You thought you could educate the public somewhat, and get the public estimate a little higher than it was, when they found out you had gone in?

Mr. WALKER. I did not quite catch the first part of it.

The CHAIRMAN. You believed you could educate the public somewhat, did you not?

Mr. WALKER. No; I did not think I could educate the public at all.

Mr. PECORA. Blair & Co., Inc., at that time was a stock corporation, was it not?

Mr. WALKER. Yes; a business corporation.

Mr. PECORA. Feeling that you were taking a great risk in buying that stock at $30 a share, your corporation, namely, Blair & Co., Inc., nevertheless committed itself to participate to the extent of 25 percent in the purchase of this block of 1,130,000 shares at $30 a share?

Mr. WALKER. Yes. Blair & Co., Inc., was a private corporation. The owners of Blair & Co., Inc., that is, all of the common stock, were active members of the firm.

Mr. PECORA. Who asked you, or Blair & Co., to become a participant in a purchasing syndicate to buy that stock?

Mr. WALKER. Mr. Sinclair.

Mr. PECORA. You readily agreed to buy it in behalf of Blair & Co.?

Mr. WALKER. I would not say I readily agreed, no. It was with a great deal of hesitation that I agreed to.

Mr. PECORA. Finally you did agree?

Mr. WALKER. Yes.

Mr. PECORA. And how long before October 24, 1928, did you indicate to Mr. Sinclair that Blair & Co. would take 25 percent participation in that purchase?

Mr. WALKER. I was hesitant up until the last day, almost—maybe 2 or 3 days. But that was my feeling in the matter at the time.

Mr. PECORA. Meanwhile, were you watching the public quotations of the stock?

Mr. WALKER. I naturally was watching the market.

Mr. PECORA. And a few days before October 24, the value of the stock, or what you deemed to be the value, namely, the public quotations, exceeded $30 a share, did it not?

Mr. WALKER. Just about that time. It was somewhere along there. I would say between the 22d and the 24th, as I remember the picture. I have not looked up the quotations lately.

Mr. PECORA. Did you have any conferences or discussions with Mr. Arthur W. Cutten about Blair & Co. becoming a participant in the purchasing syndicate?

Mr. WALKER. Yes.

Mr. PECORA. Did you write anybody to become a participant in that syndicate?

Mr. WALKER. The firm of Blair & Co., Inc., did ask one or two people to come into the original account.

Mr. PECORA. Did they come in?

Mr. WALKER. Yes.

Mr. PECORA. Who were they?

Mr. WALKER. As I remember it, there was Mr. Hill and Mr. Kalman, a joint account. They had a participation.

Mr. PECORA. They had a participation of about one half of 1 percent?

Mr. WALKER. One half of 1 percent. There was 10 percent, as you know, given away. I do not believe we asked the other participants. There were the Continental Co. of Chicago, if I remember rightly, and Mr. Arthur Reynolds, and Mr. Tinker's companies. The only ones we actually asked in ourselves, I am sure, were for one half of 1 percent for Mr. Hill and Mr. Kalman.

Mr. PECORA. Mr. Walker, originally was it proposed that this purchasing group consist of more than the following participants: Blair & Co., with a 25 percent interest; Arthur W. Cutten, 25 percent interest; Harry F. Sinclair, 25 percent interest, and the Chase Securities Corporation, 25 percent interest?

Mr. WALKER. It was not Chase Securities Co. 25 percent. It was Chase Securities Co. one sixth, and the Shermar Corporation one twelfth, with, of course, the provision and the definite understanding that 12 percent, or approximately 12 percent, was to be given away to other participants.

Mr. PECORA. The original purchasing group was to consist of the four corporations and persons that I named, was it not?

Mr. WALKER. As I remember it, the Shermar Corporation made fifth.

Mr. PECORA. Who invited the Shermar Corporation to come in?

Mr. WALKER. Why, Mr. Callahan represented the Chase interests at those meetings, and, as I remember very distinctly, Mr. Callahan always stated, from the start, that the Chase would take two thirds of that participation and the Shermar Corporation would take the other third of it.

Mr. PECORA. That is, the Chase Securities Corporation would take two thirds of the 25 percent participation?

Mr. WALKER. Yes.

Mr. PECORA. Making 16⅔ percent of the whole?

Mr. WALKER. Yes.

Mr. PECORA. And the Shermar Corporation would take the other one twelfth, making 8⅓ percent?

Mr. WALKER. Yes.

Mr. PECORA. That came through the suggestion of Mr. Callahan, did it?

Mr. WALKER. Yes.

Mr. PECORA. Mr. Callahan then was president of the Chase Securities Corporation, was he not?

Mr. WALKER. I do not believe so. I think Mr. Freeman probably was.

Mr. PECORA. He was an executive officer of the Chase Securities Corporation?

Mr. WALKER. He was an officer; oh, yes.

Mr. PECORA. Is that the way the Shermar Corporation eventually came into the original group?

Mr. WALKER. I would say, instead of coming into the original group, they were part of the original group.

Mr. PECORA. Who invited them to become a part of the original group? Who invited the Shermar Corporation to become a part of the original group?

Mr. WALKER. I presume Mr. Callahan must have.

Mr. PECORA. Who took the lead in organizing this original purchasing group, as far as you know?

Mr. WALKER. Mr. Sinclair.

Mr. PECORA. Did he invite you to come in—that is, Blair & Co.?

Mr. WALKER. Yes.

Mr. PECORA. Do you know that he invited Arthur W. Cutten to come in?

Mr. WALKER. That is my understanding.

Mr. PECORA. And do you know that he invited the Chase Securities Corporation to come in?

Mr. WALKER. Yes.

Mr. PECORA. The agreement of purchase for these 1,130,000 shares at $30 a share was made by Arthur W. Cutten individually with the Sinclair Consolidated Oil Corporation, was it not?

Mr. WALKER. Yes.

Mr. PECORA. At the time that agreement was made, was there a firm understanding or agreement between Blair & Co., Harry F. Sinclair, Arthur W. Cutten, the Chase Securities Corporation, and the Shermar Corporation that they would be associates of Mr. Cutten in the proportions that you have already mentioned in this purchase?

Mr. WALKER. As I remember it, there was a simultaneous agreement that they were to be interested on the ground-floor terms.

Mr. Pecora. Do you know why the agreement was made by the Sinclair Co. with Mr. Cutten individually and not with all the five members of the original purchasing group, or, as you call it, the "ground-floor group"?

Mr. Walker. I think the basis was that Mr. Sinclair had induced Mr. Cutten to really head this thing. I frankly doubt very much whether Mr. Sinclair could have arranged the sale of this stock if he had not secured the cooperation of Mr. Cutten for such a large amount, and Mr. Cutten further was to handle the syndicate, the trading syndicate, as it was called, and therefore it was the natural thing for Mr. Cutten to make this transaction with the company.

Mr. Pecora. Now, at all those times you were a director of the Sinclair Co. and a member of the executive committee?

Mr. Walker. Yes.

Mr. Pecora. Up to that time, up to October 24, 1928, had there been any formal discussion at any meeting of the board of directors or the executive committee with regard to the issuance and sale by the corporation of this block of 1,130,000 shares?

Mr. Walker. I do not know how to distinguish between formal and informal. I think you probably would call them informal discussions rather than formal discussions.

Mr. Pecora. Well, when for the first time was there anything of a formal nature with regard to this proposition discussed either by the executive committee or the board of directors?

Mr. Walker. Well, frankly I do not know just what you mean by "formal." I mean the matter was discussed certainly at executive committee meetings about the sale of stock and how the company was to be financed. Now, whether that got into the records I frankly do not know. I mean the minutes will have to show that.

Mr. Pecora. Well, the minutes do not show that there was any mention made at any time prior to October 24, 1928, so far as I understand. Would that mark the distinction between a formal discussion and an informal discussion—the fact that mention is made in the minutes of the discussion?

Mr. Walker. I do not know. I would not know how to answer your question. I mean I know that the matter was discussed. Now whether you call it formal or not seems to me is not material so long as it was discussed at the executive committee meetings.

Mr. Pecora. At a meeting of the executive committee that was held on October 24, 1928, it appears in evidence presented to this committee that an offer from Mr. Cutten to purchase from the Sinclair Corporation 1,130,000 shares of its unissued common stock at $30 per share was presented to the executive committee and approved or accepted. Were you present at that meeting?

Mr. Walker. I was present at the start of the meeting, and I withdrew while the resolution was being discussed, because I mentioned that I was an interested party or probably an interested party.

Mr. Pecora. Had Mr. Cutten made any formal offer for that stock to the corporation?

Mr. Walker. I think you had better ask some officer of the corporation as to the formality of it. I understood that, as matters are so often done in business down town, that an agreement was reached

verbally. Now, whether it got into the state of a formal document at that time I could not say.

Mr. PECORA. I will read you from the minutes, or what has been furnished this committee as an excerpt of the minutes of the executive committee meeting held on October 24, 1928 [reading]:

> Mr. Walker, at the request of the chairman, stated to the meeting that Arthur W. Cutten and associates had made an offer to purchase, at a price of $30 per share, all of the corporation's unissued authorized common stock together with 14,481 shares of the same class of stock now held in the treasury of the corporation, a total of 1,130,000 shares, and further advised the meeting that Blair & Co., Inc., Chase Securities Corporation, and Mr. H. F. Sinclair were interested parties to the transaction.

Now according to that extract from the minutes you made that statement to the executive committee at this meeting. Let me ask you: In view of that fact had Mr. Cutten made any formal offer to the corporation to buy at $30 per share those 1,130,000 shares referred to?

Mr. WALKER. He had said that he would buy them.

Mr. PECORA. Had he made a formal offer which was submitted to the executive committee by you at that time?

Mr. WALKER. He had advised me and had advised Mr. Sinclair, and this group had been formed that would take that block of stock, and this in effect was the announcement of that offer to the executive committee.

Mr. PECORA. You knew as a matter of fact from your own participation in conferences that led to the formation of this purchasing group that the proposition did not originate as an offer from Mr. Cutten, but rather as an offer made to Mr. Cutten by Mr. Sinclair, did you not?

Mr. WALKER. I suppose it could be from the original conversations, if you go back to when they were first discussed with Mr. Cutten—certainly Mr. Sinclair endeavored to interest Mr. Cutten, and undoubtedly Mr. Sinclair tried to get him to pay a price of $30 for the stock.

Mr. PECORA. You knew all of that?

Mr. WALKER. Oh, yes; I knew that.

Mr. PECORA. Why did you state to the meeting that an offer had been made by Mr. Cutten?

Mr. WALKER. Because he had made an offer. I mean he had agreed to buy that amount of stock.

Mr. PECORA. He had agreed to accept an offer to buy that amount of stock, had he not, which was made to him by Mr. Sinclair on behalf of the corporation?

Mr. WALKER. I do not imagine I was as technical as that at a meeting. I mean I did not attempt to differentiate between saying he had made an offer to buy or that he had made an agreement to accept so much stock. To me it is practically one and the same as a layman but may be not to you as a lawyer.

Mr. PECORA. You think it is one and the same thing?

Mr. WALKER. To all intents and purposes. I mean I did not write those minutes to start with.

Mr. PECORA. Did you then state in behalf of Blair & Co., as its president, to your codirectors and comembers of the executive committee the extent of the interest which Blair & Co., the Chase Se-

curities Corporation, and Mr. H. F. Sinclair had in the proposed transactions?

Mr. WALKER. Do you mean the exact percentages of each one?

Mr. PECORA. The extent of the interest of each one; yes.

Mr. WALKER. I cannot say that definitely from recollection, but I presume we did.

Mr. PECORA. Why do you presume you did?

Mr. WALKER. It is the most natural thing. There were only 4 or 5 people interested who were all told——

Mr. PECORA. Was not that an important enough item to have made you careful to see to it that you did state to your codirectors on the executive committee the precise interest which you or your corporation, Blair & Co., had in this proposed transaction?

Mr. WALKER. I do not place as much emphasis on that as evidently you do, because after all we were investment bankers. We had bought securities before from the Sinclair Co., and, very often, instead of having a 25-percent interest, we had a 50-percent interest.

Mr. PECORA. Do you not think, Mr. Walker, that where you as a director of one corporation entered into a transaction in behalf of that corporation with yourself as a director or officer of another corporation, that all of the detailed facts regarding the transaction should be placed right on the table face up?

Mr. WALKER. Yes; I agree to that.

Mr. PECORA. Did you do it in this intance?

Mr. WALKER. I presume I did. I cannot swear to it because I haven't anything more to swear to it by.

Mr. PECORA. Well, a moment or two ago you did not seem to attach any importance to your doing any such thing.

Mr. WALKER. I do not think I said that.

Mr. PECORA. You said you did not attach as much importance to it as I seemed to.

Mr. WALKER. Yes.

Mr. PECORA. Do you think the importance that I attach to it is an exaggerated one?

Mr. WALKER. Why, not exaggerated; but my point was this, that Blair & Co. were investment bankers. That it was not like any outside interest at all. They were dealing with a corporation. The corporation knows they have a very substantial interest in any transaction. That is my point: As far as whether or not I actually mentioned that we had 25 percent interest or 22½ percent interest, I did not think it was so very material. If we had been an outside interest it might have been more material, but as bankers where we would have 25, 50, 33½, sometimes 100 percent interest in transactions, that was our business. That is why.

Mr. PECORA. Can you point to anything in the records of the Sinclair Corporation that indicates that at any time the corporation had knowledge of the extent of the interest which Blair & Co. had and which Harry F. Sinclair had in this particular transaction?

Mr. WALKER. No.

Mr. PECORA. Now when were these original 25 percent interests among these four participants changed? And the reason I say four participants, Mr. Walker, is because, according to the minutes of the meeting of the executive committee of the Sinclair Corporation, it

appears that you made the statement to the executive committee that associated with Mr. Cutten in the purchase of these 1,130,000 shares were Blair & Co., Chase Securities Corporation, and Mr. H. F. Sinclair. No mention there made of the Shermar Corporation.

Mr. WALKER. It must have been practically simultaneous.

Mr. PECORA. That is, as soon as this offer of Cutten's, so-called, was accepted, there was a shifting of the arrangements for the formation of this purchasing group so that the Shermar Corporation and others were admitted?

Mr. WALKER. Of course, as I remember previous Sinclair transactions, that is transactions with the Sinclair Co., Shermar Corporation did have a part of the transaction. I have not looked this up, but I would be quite sure of it—and I could check it, of course—that whenever we bought bonds from the Sinclair Co. previous to this Shermar had a certain relative interest to Chase Securities.

Mr. PECORA. But when you opened this meeting, or made this statement to the meeting of the executive committee, apparently all you had knowledge of was that the participants in this purchasing syndicate were only four, and they excluded the Shermar Corporation?

Mr. WALKER. Well, frankly in discussions we only referred just to four; to just Sinclair, and so forth. And in practice it was understood that Shermar would probably be interested. Now, that may well be an error on my part at that time not to have mentioned the Shermar Corporation. I mean I cannot see it in any other light, because I must have known—I presume I knew that Shermar would probably, if not actually, be interested in the transaction.

Mr. PECORA. How long after October 24 did Blair & Co. change its participation from a 25 percent interest in this group to something less than that?

Mr. WALKER. Do you mean to the 22½ percent level?

Mr. PECORA. To anything less than the 25 percent originally contemplated and agreed upon.

Mr. WALKER. The original agreement was that we had the right to give off up to 12 percent. Now, that was done almost immediately to the extent of 10 percent.

Mr. PECORA. I show you committee's exhibit no. 114 in evidence, entitled "List of participants in Sinclair purchasing syndicate as finally constituted, with percentages and share of profits received." Will you look at that list and tell us if any of the participants therein named were invited to come in by you or by anyone connected with Blair & Co. to your knowledge?

Mr. WALKER. Well, as I said before, I think the only ones here are L. W. Hill and C. O. Kalman, one half of 1 percent.

Mr. PECORA. Do you know who invited the other participants whose names appear on that exhibit other than the original participants?

Mr. WALKER. Of course, this is remembrance.

Mr. PECORA. Yes.

Mr. WALKER. I think that the Continental National Co. and Arthur Reynolds were asked by the Chase Securities Corporation. I think Mr. Andrews was asked by Mr. H. F. Sinclair. And the Famoth

Corporation and the Traywin Corporation are corporations in which Mr. E. R. Tinker is some way or other interested, and he was a director and requested himself an interest in it.

Mr. PECORA. A director of what?

Mr. WALKER. Of the Sinclair Co. If I remember right.

The CHAIRMAN. What was the idea of giving away some of the interests?

Mr. WALKER. Some of the interests? To reduce one's commitment. It is a regular banking practice to cut your commitments down.

Mr. PECORA. Was it really considered important to reduce somebody's commitment by giving one half of 1 percent to Hill and Kalman?

Mr. WALKER. Well, Hill and Kalman were friends of Blair & Co., Inc., and it may be that Mr. Kalman was in New York at the time and heard of the transaction and requested the interest. I cannot say.

Mr. PECORA. Is it not done ordinarily to enable participants or some of the group to let friends in on the ground floor? I am using the term "ground floor" now because you used that term before. I am not familiar with that terminology. Is it not, Mr. Walker?

Mr. WALKER. If you mean it is human nature to invite one's friends in, yes.

Mr. PECORA. To let them in on the ground floor? Not to reduce commitments, but to pass around a good thing.

Mr. WALKER. Oh, it is to reduce commitments and to consider one's friends, both, when you do reduce commitments.

Mr. PECORA. Yes. Now, you know Mr. Fitzpatrick, do you not, Mr. William Samuel Fitzpatrick?

Mr. WALKER. I do.

Mr. PECORA. Have you known him for many years?

Mr. WALKER. Well, many years now; yes.

Mr. PECORA. You know, do you not, that the original or the purchasing syndicate that was organized to buy this 1,130,000-share block of stock from the Sinclair Co. disposed of that stock by various means and methods at a profit of about 12 million dollars?

Mr. WALKER. Yes.

Mr. PECORA. You know, do you not, that 2½ percent of that profit was paid to Mr. Fitzpatrick?

Mr. WALKER. Yes.

Mr. PECORA. Who brought that about?

Mr. WALKER. I think I had better tell you my recollection of the story. We had been negotiating for the purchase of certain Prairie Oil shares.

Mr. PECORA. When you say "we", do you mean Blair & Co.?

Mr. WALKER. Blair & Co., Inc., yes. Blair & Co., Inc., had been negotiating for the purchase of certain shares of the Prairie Oil & Gas Co. and Prairie Pipe Line Co. from certain of the Rockefeller funds. Those negotiations to the best of my knowledge had started early in 1928, and they were continued along for months. During those negotiations we naturally saw considerable of Mr. Fitzpatrick because we had to study the company and determine our ideas as to the value of the shares and as to whether in our opinion they could be bought at a price which would enable them to be disposed of at a reasonable profit. In the course of those negotiations the question

evidently came up in discussions between Mr. Marston and Mr. Fitzpatrick, and I presume, Mr. Cutler——

Mr. PECORA (interposing). Was Mr. Marston then connected with Blair & Co.?

Mr. WALKER. Yes; he was.

Mr. PECORA. And who was Mr. Cutler connected with?

Mr. WALKER. The Rockefeller people. What was the last I said [addressing the shorthand reporter]?

(Thereupon the last sentence referred to was read by the shorthand reporter as above recorded, as follows:)

In the course of those negotiations the question evidently came up in discussions between Mr. Marston and Mr. Fitzpatrick, and I presume Mr. Cutler——

Mr. WALKER (continuing). As to taking care of Mr. Fitzpatrick in some form or other if we bought those shares. Mr. Fitzpatrick—I happened to be here when he was testifying—said that he understood that there was some 10 percent understanding. Frankly I do not remember what the percentage was.

Mr. PECORA. Ten percent understanding with whom? And 10 percent of what?

Mr. WALKER. Of the profits of the Prairie Oil & Gas Co. and Prairie Pipe Line Co.—of any profits that might be made on the sale of those stocks to the public.

Mr. PECORA. That might be made by whom?

Mr. WALKER. By Blair & Co.

Mr. PECORA. Well, you as president of Blair & Co. were under no obligations nor was your company to Mr. Fitzpatrick to pay him 10 percent of any profits that your company might make from any such transaction, were you?

Mr. WALKER. We were under absolutely no obligation. But there are always business considerations. If we were going in to buy such an important interest in the Prairie Oil & Gas and Prairie Pipe Line Cos., we considered it important to have the management a satisfied and pleased management. Now, this was nothing unusual. It has been done in other transactions before of a similar nature.

Mr. PECORA. Now, whom did you regard as the management? Mr. Fitzpatrick?

Mr. WALKER. Mr. Fitzpatrick; yes.

Mr. PECORA. He was the executive head?

Mr. WALKER. Yes.

Mr. PECORA. And the servant of the stockholders?

Mr. WALKER. Yes.

Mr. PECORA. Why was it necessary in your opinion as a banker who contemplated buying shares owned by the Rockefeller Foundation in the stock of the Prairie Co. to see to it that the servant of the corporation was satisfied to have you become a stockholder?

Mr. WALKER. Well, just ordinary business of wanting—where you undertake a very important transaction mounting into a great many millions of dollars, that you want to be sure of the good will and the ability to work agreeably in the situation, and this was entirely agreeable to the seller, so there was not any objection so far as I could see so long as both buyer and seller were agreeable to it.

Mr. PECORA. Let me see if I understand you correctly. Your banking firm contemplated buying millions of dollars' worth of the stock of the Prairie Oil & Gas Co., then owned by the Rockefeller Foundation, did you?

Mr. WALKER. Yes.

Mr. PECORA. And had you succeeded in making that purchase your firm would have become a very large stockholder in the Prairie Oil & Gas Co.?

Mr. WALKER. Yes.

Mr. PECORA. Hence your firm would have become one of the masters or employers of Mr. Fitzpatrick, is that right?

Mr. WALKER. Employer in that you are stockholder.

Mr. PECORA. Yes.

Mr. WALKER. But after all we would have been minority stockholders in that picture.

Mr. PECORA. All right. And you wanted to make sure that the servant was satisfied with his master?

Mr. WALKER. Wanted to have the good will for the benefit of the corporation entirely.

Mr. PECORA. Did you not think it was more important for Mr. Fitzpatrick to have the good will of yourself as one of his potential masters?

Mr. WALKER. I think Mr. Fitzpatrick could well afford to be independent at that time.

Mr. PECORA. Well, that being the case, why did you think that on these business considerations, as you have called them, it was necessary or advisable or proper or important for Blair & Co. to have arranged to give Mr. Fitzpatrick some portion—10 percent or any any other percent—of any profits which Blair & Co. expected to make from its purchase of Prairie Oil & Gas Co. stock?

Mr. WALKER. All I can say on that is that it was discussed with the sellers of the stock. That we had made previous purchases of other shares from the same interests. And in each case the same question had arisen where certain privileges were granted to the management to acquire shares.

Mr. PECORA. By "privileges" do you mean perquisites in the way of interests in profits?

Mr. WALKER. Either the right to buy at the original price that the stock was purchased at, or share in profits, or something of that nature.

Mr. PECORA. Did I understand you before to say that that was more or less of a common practice?

Mr. WALKER. In these particular transactions.

Mr. PECORA. Go head and tell us the rest of the circumstances under which this $2\frac{1}{2}$ percent of the profits accruing to the purchasing group in the Sinclair deal was paid to Mr. Fitzpatrick.

Mr. WALKER. The Prairie deals were not concluded, as I have intimated, for several months. Consequently there was no definite fixed participation arranged with Mr. Fitzpatrick. Then along came this Sinclair transaction, which was completed before the Prairie transactions were completed.

Mr. PECORA. But the Prairie transaction had not been called off?

Mr. WALKER. It had been off and on and off and on.

Mr. PECORA. Well, go ahead.

Mr. WALKER. So that the question was just up for consideration as to whether or not Mr. Fitzpatrick should have a larger interest in one transaction or a smaller interest in two transactions.

Mr. PECORA. Well, now, when that question came up in connection with the Sinclair Oil stock deal, with whom did the question come up?

Mr. WALKER. I naturally discussed it with my partners, I presume.

Mr. PECORA. Did you discuss it then with Mr. Cutler?

Mr. WALKER. No.

Mr. PECORA. He had nothing to do with that transaction, did he?

Mr. WALKER. He had absolutely nothing to do with the Sinclair transaction.

Mr. PECORA. And the Rockefeller interests had nothing to do with it?

Mr. WALKER. The Rockefeller interests had nothing to do with it in any way, shape, or form.

Mr. PECORA. All right. Go ahead.

Mr. WALKER. So then for the same reasons we decided that it would be advisable to give Mr. Fitzpatrick 2½ percent interest in the profits of this Sinclair trade.

Mr. PECORA. Now, who made that decision, Mr. Walker?

Mr. WALKER. In the first instance, do you mean?

Mr. PECORA. Whenever it was made.

Mr. WALKER. It was agreed to of course by all the participants.

Mr. PECORA. When was that decision or agreement made?

Mr. WALKER. Oh, practically at the time of the purchase of the stock; of the 1,130,000 shares.

Mr. PECORA. Did you discuss it with the other participants at that time?

Mr. WALKER. I certainly discussed it with some of them.

Mr. PECORA. With whom?

Mr. WALKER. Well, I probably discussed it with all of them.

Mr. PECORA. That would include Mr. Arthur Cutten, Mr. Harry F. Sinclair, the Shermar Corporation, and the Chase Securities Corporation, would it not?

Mr. WALKER. It certainly includes everybody with the possible exception of Mr. Arthur Cutten, because Mr. Arthur Cutten was only in New York so occasionally, and it may have been talked with him on the telephone. But the others were in New York.

Mr. PECORA. And you say all of the participants agreed upon your suggestion that Mr. Fitzpatrick receive 2½ percent of whatever profits would accrue to that purchasing syndicate?

Mr. WALKER. Yes.

Mr. PECORA. From the Sinclair Oil stock transaction?

Mr. WALKER. Yes.

Mr. PECORA. Did you give those participants the reason why Blair & Co. wanted to take care of Mr. Fitzpatrick in that way?

Mr. WALKER. Why, I must have.

Mr. PECORA. Well, what reason did you give them?

Mr. WALKER. The same as I have stated here. You see, this was the same group that also purchased the Prairie stocks. I mean practically the identical group. So that it affected——

Mr. PECORA. Was Sinclair in that group?

Mr. WALKER. As I remember it.

Mr. PECORA. In the group that purchased the Prairie stock?

Mr. WALKER. As I remember it.

Mr. PECORA. All right. Go ahead.

Mr. WALKER. So that there was, practically, no difference between giving a larger participation in one, and a smaller participation in that and the other.

Mr. PECORA. Well, now, the reason that obtained or that impelled you to recognize the advisability of seeing to it that Mr. Fitzpatrick as the management of the Prairie Oil Co., should be satisfied, was not present in the transactions that involved the purchase of Sinclair Co. stock, was it? In other words, he was not the manager of the Sinclair Co., was he?

Mr. WALKER. No. He was not manager of the Sinclair Co., and had nothing to do with the Sinclair Co.

Mr. PECORA. Well, the reason that impelled you to take care of Mr. Fitzpatrick in the transaction in which Blair & Co. were to acquire Prairie Oil & Gas Co. stock, as I understand your testimony, was that you wanted to keep the management satisfied; is that right?

Mr. WALKER. Well, Mr. Fitzpatrick has stated that he wanted 10 percent in the one thing.

Mr. PECORA. Did he state that to you originally?

Mr. WALKER. I cannot say whether he said 10 percent or any other percentage.

Mr. PECORA. Why, Mr. Fitzpatrick stated here this morning that he never sought this at all; that it was offered to him originally, or was proposed to him by Mr. Cutler, and that Blair & Co. fell in line with the idea for some reason or other. Does that surprise you?

Mr. WALKER. Let me have that question again, please.

Mr. PECORA. The committee reporter will read it to you. [Which was done.]

Mr. WALKER. No; that does not surprise me.

Mr. PECORA. Well, then, do you recognize it to be the truth?

Mr. WALKER. I recognize that the suggestions were discussed at No. 26 Broadway, as to taking care of Mr. Fitzpatrick in some form or other. And I think that is in line with just what I have testified here myself.

Mr. PECORA. I am afraid it is not, or else I cannot see the line that you are looking at. Now, Mr. Walker, you stated that the interest which Blair & Co. had, or the motive which Blair & Co. had in wanting to take care of Mr. Fitzpatrick out of any profits that Blair & Co. would make through their acquisition of Prairie Oil & Gas Co. stock was to keep him as the manager, or to keep the management of the Prairie Oil & Gas Co., satisfied. That was an entree into the ranks of the stockholders of that company, wasn't it?

Mr. WALKER. Yes.

Mr. PECORA. Well, that is one definite motive or reason, isn't it?

Mr. WALKER. Yes.

Mr. PECORA. Now, what part did that motive or reason play in the negotiations or the transactions or the decision in which it was arranged to give Mr. Fitzpatrick 2½ percent of the profits accruing to this purchasing syndicate of Sinclair Consolidated Oil Corporation stock?

Mr. WALKER. It had nothing to do with it directly. But, as I say, Mr. Fitzpatrick was naturally associated with us at that time—

and by "associated" I mean we were seeing one another in connection with this other transaction, and in a study of his company, and the question had been discussed as to what participation, if any, he would take in that transaction.

Mr. PECORA. In which transaction?

Mr. WALKER. In the Prairie transaction. And when this one came along it brought the matter to a head, and it was said: Well, all right, let us give Mr. Fitzpatrick 2½ percent in this end 2½ in the other.

Mr. PECORA. Who proposed that originally, you?

Mr. WALKER. I would not be surprised if I did. I cannot say definitely whether I did or whether it was talked over amongst my partners, or how it was done.

Mr. PECORA. And you suggested to the other participants in that Sinclair purchasing group, what?

Mr. WALKER. Yes, as I remember it, that they should give 2½ percent in both of these accounts.

Mr. PECORA. Well, now, let me see about that. Mr. Wiggin of the Shermar Corporation testified here that he never learned why or how that 2½ percent was paid to Mr. Fitzpatrick. And let me say further that Mr. Sinclair testified here yesterday afternoon that he did not learn until about 2 weeks ago why Mr. Fitzpatrick received that 2½ percent. Do you quarrel with their testimony?

Mr. WALKER. I cannot help what anybody else testifies.

Mr. PECORA. And let me remind you further that Mr. Arthur W. Cutten testified before this subcommittee that he never knew why that 2½ percent was paid to Mr. Fitzpatrick. Do you quarrel with Mr. Cutten's testimony?

Mr. WALKER. Some people have poor memories.

Mr. PECORA. Then the situation is this: The whole regiment is out of step but you.

Mr. WALKER. I am trying to give you the best of my memory, which is all that I can give you.

The CHAIRMAN. Mr. Walker, was there ever in your mind any amount of benefits or perquisites that should go to Mr. Fitzpatrick?

Mr. WALKER. How was that?

The CHAIRMAN. Did you have in mind any fixed amount that was to go to him?

Mr. WALKER. Do you mean in dollars?

The CHAIRMAN. Yes.

Mr. WALKER. No. Of course, in this transaction the profits were far, far beyond what anybody ever anticipated.

The CHAIRMAN. Well, you felt that $149,000 of benefits was not enough?

Mr. WALKER. No. That came subsequently. You see, nobody knew about the possible or probable profits when these transactions were made. The Sinclair transaction was made at the end of October, at a price of $30. We would have been very happy, speaking quite frankly, if we had made a couple of points on that transaction. I mean that it would have been considered a good business operation. The fact that it ended in something like a gain of 12 points was—well, quite frankly, was amazing, beyond any of our wildest dreams. Now——

Mr. PECORA (interposing). The public were very generous in fixing a value for that stock, then?

Mr. WALKER. Surely they were.

Mr. PECORA. And generous one might say beyond all of your expectations.

Mr. WALKER. And as to other stocks, too.

Mr. PECORA. We know that. And the public was aided in fixing that generous value of Sinclair stock by the operations of a trading syndicate organized at the same time the purchasing syndicate was organized, isn't that so?

Mr. WALKER. I did not run the trading syndicate so I cannot say about it.

Mr. PECORA. But you knew all about it, didn't you?

Mr. WALKER. No.

Mr. PECORA. Well, I will ask you some more in detail about that this afternoon.

Mr. WALKER. Might I finish that answer?

Mr. PECORA. Certainly.

Mr. WALKER. Then the Sinclair syndicate was formed on October 24. The Prairie syndicate was formed about a month later, November 25 or 26, or somewhere along in there. Now, when the Prairie syndicates were formed nobody had any idea what the profits would be in either the Sinclair or the Prairie. Matters happened to work out as they did due to market conditions at the time, in an exceedingly large sum.

The CHAIRMAN. Mr. Walker, as I understand the situation, first Mr. Fitzpatrick was paid $10,000, and then he was paid $19,000 in the Prairie syndicate transaction.

Mr. WALKER. Well, that was only out of the profits of that as and when the stocks were sold.

The CHAIRMAN. I understand, but you felt like those items would not be enough benefit to Mr. Fitzpatrick, and therefore you gave him 2½ percent in Sinclair.

Mr. WALKER. No; he got the Sinclair participation first.

The CHAIRMAN. He got that first?

Mr. WALKER. Yes. He got the Sinclair participation on October 24, and he got the Prairie participation November 25 or 26, some time later on.

The CHAIRMAN. And you practically fixed the amounts?

Mr. WALKER. As a result of discussion, undoubtedly.

Mr. PECORA. And the discussion has been completely forgotten by all persons with whom you have claimed to have discussed it, according to you.

Mr. WALKER. Well, I am certain that I discussed it. I am not that bad a business man that I would not tell my associates what I am doing.

Mr. PECORA. Are you that good a business man that you reduced this understanding to writing, about giving Fitzpatrick 2½ percent?

Mr. WALKER. I suppose I am not, if you want to put it in that form.

Mr. PECORA. I was trying to find out how good or how bad a business man you are, Mr. Walker.

Mr. WALKER. Well, that is all right.

Mr. Pecora. Apparently you were not that good a business man, as to reduce to writing the understanding that you claim you arrived at with your associates in this purchasing group, that involved eventually a payment of $300,000 to somebody else. Is that a fair statement?

Mr. Walker. I was not the manager of this syndicate.

Mr. Pecora. You were the proposer of this plan to give Mr. Fitzpatrick 2½ percent, however?

Mr. Walker. Yes. But I was not the manager of the syndicate, and did not write letters to the syndicate members.

Mr. Pecora. As the proposer of the plan were you a good enough business man to put that in writing and have it subscribed by all of the participants who were to make a contribution toward this 2½ percent of the profits?

Mr. Walker. I never put anything in writing on it, I will answer.

Mr. Pecora. Did you have any correspondence with anybody relating to this understanding that you say you arrived at with your coparticipants in the original purchasing group?

Mr. Walker. No.

Mr. Pecora. Did you dictate or make any memorandum of those conferences?

Mr. Walker. I am not in the habit of making memoranda.

Mr. Pecora. Now, the purpose of giving 2½ percent to Mr. Fitzpatrick was to satisfy some idea or notion of Blair & Co., wasn't it?

Mr. Walker. We were working with Mr. Fitzpatrick in connection with the purchase of those Prairie stocks, and that must have been the reason and is the only reason I can offer.

Mr. Pecora. Well, if Blair & Co. found it expedient, advisable, or necessary to take care of Mr. Fitzpatrick in that fashion, why, in Heaven's name, did not Blair & Co. give Fitzpatrick that $300,000 out of their own share of the profits and not require all of the other participants to contribute to it?

Mr. Walker. Because they were equally interested in this purchase. There was no reason why Blair & Co. should have assumed it. We were not the only purchaser of this stock. They had their relative interests the same as we had ours. That was done in everybody's interest.

Mr. Pecora. I can understand the reason you give, although I may not approve of it. I can understand the reason you give for wanting to take care of Mr. Fitzpatrick in a transaction in which you were going to become a stockholder in his company, in the company of which he was the president. In other words, you wanted to stand in with the managament. But I cannot understand why you should have thought of Mr. Fitzpatrick in the other way, in a deal that he was in no way connected with, in a company of which Mr. Fitzpatrick was neither president nor manager. Can you enlighten me on that?

Mr. Walker. We would not, except that the other deal was pending at the time. That was all. The two deals were practically simultaneous.

Mr. Pecora. But they had nothing in common.

Mr. Walker. Nothing in common; absolutely not.

The CHAIRMAN. You knew there was going to be a profit in the first deal, didn't you?

Mr. WALKER. You never know anything when you go into a deal. Until the stock is sold you never know whether there is to be a profit or a loss. If this had happened to be in the fall of 1929 instead of in the fall of 1928, we would have all taken a serious loss instead of a profit.

Mr. PECORA. Mr. Walker, did you take up this participation, or rather this desire of Blair & Co. to give Mr. Fitzpatrick something out of the profits that would accrue to the purchasing syndicate, with the Continental National Co. of Chicago?

Mr. WALKER. I do not think so.

Mr. PECORA. They were participants? They were permitted to come in on the ground floor after the ground floor was first laid, after the first 4 or 5 participants were in?

Mr. WALKER. I doubt whether any of the other participants were advised, except Mr. Tinker.

Mr. PECORA. Weren't you, in effect, giving away some of their money without consulting them?

Mr. WALKER. That group, as I say, was working in both propositions. They were interested practically simultaneously in both. So that it did not affect them much one way or the other whether Mr. Fitzpatrick got a larger interest in one or a smaller interest in the two transactions.

Mr. PECORA. Were they interested in the Prairie Oil syndicate?

Mr. WALKER. As I remember it; yes. Practically the same group, with 1 or 2 small additions, were in the Prairie syndicate.

Mr. PECORA. Where did any desire of the Rockefeller interests come into this picture, to take care of Mr. Fitzpatrick?

Mr. WALKER. I don't know. I didn't have any conversation with the Rockefeller interests.

The CHAIRMAN. The upshot of the whole matter was that you bought those 1,130,000 shares of Sinclair Consolidated Oil Corporation stock at $30 a share.

Mr. WALKER. Yes, sir.

The CHAIRMAN. And you sold them at something like 38, and the people who bought them at 38 have lost the difference between 38 and the present price of about 12, which means $26 a share. That means that 26 million dollars have been lost. That is the upshot of it, isn't it?

Mr. WALKER. I do not think that is a fair way to put it. If this were the only stock that had declined I would answer, yes. But this is not the only stock, as you know, to decline, for the whole market has declined.

The CHAIRMAN. I know that.

Mr. WALKER. I happen to be a considerable stockholder in the Sinclair Co., and have been for years, which stock I have held for years, and I am relatively better off in that than I am in a great many holdings that I have.

The CHAIRMAN. As a matter of fact, the stock is now selling at $12 a share, and the people who paid $38 a share for it have lost $26 a share.

Mr. WALKER. If those same people hold it today, they are out-of-pocket to that extent as a paper proposition. But paper profits and paper losses you cannot count.

The CHAIRMAN. Well, were all the losses in Wall Street paper losses?

Mr. WALKER. No; some of them——

The CHAIRMAN (continuing). Is the depreciation in securities simply a matter shown on paper?

Mr. WALKER. No. And some may come back, or at least we hope they are coming back.

The CHAIRMAN. I suppose the fact that the public is out-of-pocket 26 million dollars on this stock is where the joke comes in. That is, as a result of both transactions. Well, now, the subcommittee will take a recess until 2 o'clock this afternoon.

Mr. PECORA. And you will return then, Mr. Walker?

Mr. WALKER. Yes, sir.

(Thereupon at 1 p.m., Wednesday, Nov. 15, 1933, the subcommittee recessed to meet at 2 o'clock the same day at the same place.)

AFTERNOON SESSION

(The hearing was resumed at the expiration of the recess.)

The CHAIRMAN. The committee will come to order. Mr. Walker will resume the stand.

TESTIMONY OF ELISHA WALKER, A MEMBER OF THE FIRM OF KUHN, LOEB & CO.—Resumed

Mr. PECORA. Mr. Walker, of whom did the company called "Blair & Co., Inc." consist in 1928?

Mr. WALKER. The so-called "partners", as we termed them, were Mr. Hunter Marston, Mr. Henry Lockhart, Jr., Mr. J. Cheever Cowdin, Mr. George Armsby, Mr. G. N. Lindsay, Mr. E. F. Hayes, Mr. Harry Bronner, Mr. Graham Youngs, and Mr. Clarence Lewis, and myself.

Senator COUZENS. Was it a partnership?

Mr. WALKER. It was a corporation formed under the business laws of the State of New York, and also a separate partnership.

Senator COUZENS. With limited liability?

Mr. WALKER. The corporation was a limited liability corporation, and the partnership, of course——

Senator COUZENS. Those names you have just mentioned—were they in both the corporation and the limited partnership also?

Mr. WALKER. I think they all were. It was a general partnership, not a limited partnership. The corporation was a limited corporation the same as any other corporation.

Senator COUZENS. But I understood you to say there were two; there was a partnership and a corporation, both?

Mr. WALKER. Yes.

Senator COUZENS. Were the same group you have just mentioned in the corporation organized under the laws of the State of New York and the separate partnership?

Mr. WALKER. Yes.

Senator COUZENS. They were all in the same group?

Mr. WALKER. Yes; they were all in the same group.

The CHAIRMAN. How was the business done with Blair & Co.? Was that with the corporation or the partnership?

Mr. WALKER. With the corporation.

Mr. PECORA. Mr. Walker, do you know any reason why the stockholders of the Sinclair Consolidated Oil Corporation were not given the opportunity to purchase this block of 1,130,000 shares?

Mr. WALKER. I think I know the underlying reason. It was the fact that the stock would have had to be offered to stockholders at a price lower than the market, which presumably would have been not over $25 a share. It would have then been necessary to pay underwriting commissions to insure the success of the offering from the standpoint of the company and that would have netted the company materially less than the $30 a share.

Mr. PECORA. Why was the trading account formed by the original purchasing syndicate?

Mr. WALKER. In order to stabilize the market, I would say.

Mr. PECORA. This morning you said that the real value of the stock that was listed on the exchange was to be measured by the public quotations which you say are made by the public?

Mr. WALKER. Yes.

Mr. PECORA. Then why did you not let the public make the price without any artificial stabilization by persons who had acquired a very large block of the stock?

Mr. WALKER. I do not think the intent was artificial stabilization. I think the intent was that on certain days there are more sellers than buyers, and on other days there are more buyers than sellers——

Mr. PECORA. And that is what helps fix the price?

Mr. WALKER. This tends to stabilize the market. In other words, if some man came one day to sell 50,000 shares and there had not been a purchasing group, I mean this trading group, the chances are it would have depressed the price maybe unduly; and vice versa, if somebody had come in to buy 50,000 shares on the market and the account was not there to sell the stock, it would have raised it.

Mr. PECORA. Does not that reasoning run counter to the philosophy you gave expression to this morning, that the real value of a security is what the public fixes through market trading?

Mr. WALKER. I do not think necessarily so; no.

Mr. PECORA. Why do you not permit the public, then, to trade in accordance with its own will, and not supply buying power to give support to the market when prices go down?

Mr. WALKER. I think it is a very proper function to try to stabilize markets.

Mr. PECORA. Was it not really done to enable the purchasing syndicate to dispose of its 1,130,000 shares at a profit?

Mr. WALKER. It was done to stabilize the market, I would say.

Mr. PECORA. Was it not done also to enable the purchasing syndicate to dispose of its 1,130,000 shares at a profit?

Mr. WALKER. It was done as a back-log to that situation.

Mr. PECORA. Can you not answer the question without any such qualification?

Mr. WALKER. No, I really cannot, Mr. Pecora. I think it was done in a sincere and honest effort to help and not to harm the market in any way.

Mr. PECORA. To help the market to whose advantage?

Mr. WALKER. To everybody's advantage, to every stockholder's advantage. We all know at times that big blocks of stock—and in this particular case there were certain big blocks of stock—come into the market, and if those blocks had been on the market it would have been very detrimental to the stockholders of the corporation if the market had declined unduly.

Senator COUZENS. Who put those large blocks of stock on the market? You said there were certain large blocks of stock that came on the market. Who put them there?

Mr. WALKER. If I remember rightly, H. P. Whitney sold a substantial block of stock, for one.

Senator COUZENS. And at the same time he was in the syndicate?

Mr. WALKER. At the same time he was in the syndicate.

Senator COUZENS. What other blocks came on the market at that time?

Mr. WALKER. That is the one I was thinking of particularly.

Mr. PECORA. Do you know how large a block he put into the market?

Mr. WALKER. It was very big; I could not state definitely; but if I remember rightly, it was in the hundreds of thousands of shares.

Mr. PECORA. Do you know that about the time of this agreement of October 24, 1928, there were upwards of 500,000 shares of that stock traded in on the New York Stock Exchange?

Mr. WALKER. Pardon me. When was that traded in, you say?

Mr. PECORA. Around October 24, 1928.

Mr. WALKER. I do not remember just what was traded in on any date.

Mr. PECORA. On October 24, 1928, the date when this agreement was made between the Sinclair Co. and Arthur W. Cutten in behalf of the purchasing syndicate, there appear to have been 500,700 shares of the stock traded in on the New York Stock Exchange. Do you know whether that was the occasion when any of these large blocks that you speak of were thrown into the market?

Mr. WALKER. I could not remember the dates at all, but I think Mr. Whitney's sales came later. I am not sure.

Mr. PECORA. Do you know that on that day the price of the stock ranged from a low of 32 to a high of $35\frac{7}{8}$, with a closing quotation of $35\frac{5}{8}$?

Mr. WALKER. Well, if you tell me so from the records, it must be so.

Mr. PECORA. And that the following day, October 25, there were 453,200 shares of the stock traded in on the New York Stock Exchange, with low of $35\frac{1}{2}$ and high of $37\frac{1}{4}$ and a closing price of $36\frac{3}{4}$?

Mr. WALKER. I haven't any records to show that.

Mr. PECORA. Hadn't there been a steady appreciation in the market price of that stock for some time prior to October 24?

Mr. WALKER. As I remember it, the stock was somewhere in the low twenties earlier in the year and advanced up to around the 28

level—of course, this is trying to remember without checking at all, you understand—and fluctuated around that level until just before this transaction it went through 30.

Mr. PECORA. Can you, as the executive head of Blair & Co., Inc., one of the participants in this original purchasing group, tell us how the purchasing group had arranged to finance this purchase of 1,130,000 shares from the Sinclair Corporation?

Mr. WALKER. As I remember the contract, the group had the right to pay for this stock——

Senator COUZENS (interposing). That appears in the contract.

Mr. WALKER. Yes. The corporation had a right to call payment any time on 30 days' notice.

Mr. PECORA. Any time after 30 days' notice?

Mr. WALKER. Any time after 30 days they had the right to charge 6 percent interest. That is the way I remember it.

Mr. PECORA. What arrangements, if any, had been made by the members of the purchasing group to finance the purchase?

Mr. WALKER. At the start you mean?

Mr. PECORA. Yes.

Mr. WALKER. I don't think any special arrangements had been made. Each one was supposed to take care of his own participation.

Mr. PECORA. Was that actually done eventually, or was a loan negotiated to enable this participating group to finance the purchasing of the stock?

Mr. WALKER. As I understand it, a loan was made for certain members of the group, but Blair & Co., Inc., I believe paid some three million and odd dollars in December for their shares of the stock taken up from the company.

Mr. PECORA. What loan was made to enable any of the members to finance their participation in the purchase?

Mr. WALKER. I heard that the Chase made a loan of $12,000,000.

Mr. PECORA. To whom?

Mr. WALKER. To the syndicate manager.

Mr. PECORA. To Mr. Cutten, as the manager of this purchasing group, was it not?

Mr. WALKER. I would not be surprised, but I have not checked those papers. Of course, syndicate agreements are made sometimes where each one can finance his own, and then the other syndicate agreements are pledged. In this case, as I remember it, Blair & Co., Inc., actually paid their share at the time.

Mr. PECORA. On December 27, 1928, the first deliveries of the 1,130,000 shares were made by the Oil Corporation to the purchasing syndicate for a consideration of $15,000,000?

Mr. WALKER. Yes.

Mr. PECORA. Did Blair & Co. pay $3,000,000 of that $15,000,000 out of its own resources?

Mr. WALKER. I do not know whether it was 3 millions out of the 15, or 3 millions out of the 18. I think the first 500,000 shares——

Mr. PECORA (interposing). Were delivered on December 27?

Mr. WALKER. And the others were delivered——

Mr. PECORA (interposing). Against a payment of 15 million dollars?

Mr. WALKER. And the others were delivered right after that.

Mr. PECORA. How long after?

Mr. WALKER. Two days after, I think, against a payment of 18 million dollars. Which one we took up I cannot say. [After consulting an associate.] We paid three million three hundred and some odd thousand dollars, I remember, and I cannot say whether it was in connection with that 500,000 or whether it was in connection with the six hundred and odd thousand on one of those 2 days. You see, the syndicate had already sold—Mr. Cutten had already sold—part of this stock.

Mr. PECORA. Do you know through what medium payment was made in behalf of the purchasing syndicate of that 15 million dollars to the oil corporation?

Mr. WALKER. I haven't——

Mr. PECORA (interposing). Wasn't it through E. F. Hutton & Co.?

Mr. WALKER. Oh, to the oil corporation; yes.

Mr. PECORA. Through E. F. Hutton & Co.?

Mr. WALKER. Yes; E. F. Hutton & Co.

Mr. PECORA. E. F. Hutton & Co. were a firm of stockbrokers who were engaged or employed by both the purchasing syndicate and the trading syndicate of which the purchasing syndicate were members to handle the market tradings in this stock, were they not?

Mr. WALKER. They handled it for Mr. Cutten as syndicate manager. I believe that is technically correct.

Mr. PECORA. And don't you know that E. F. Hutton & Co., in order to enable them to make that 15-million-dollar payment to the Oil Corporation, borrowed 12 million dollars from the Chase National Bank?

Mr. WALKER. Well, I know that they borrowed—at least to the best of my knowledge—they borrowed 12 million dollars of the Chase National Bank, but I know that Blair & Co., Inc., in connection with either that delivery of stock or the delivery on the 31st or whatever it was of December, paid their proportion. I do not believe that Blair were part of that loan at the Chase, because I remember well we did pay money—we did not want to, frankly, pay the rate of interest that banks were charging at that time. We had our own money and we paid our own money.

Mr. PECORA. Have you told this committee everything you can recall concerning the reasons for or the circumstances surrounding the payment to Mr. Fitzpatrick of 2½ percent of the profits that accrued to that purchasing syndicate?

Mr. WALKER. To the best of my recollection.

Mr. PECORA. Is there anything that you can add to what you have already told the committee on that subject without the necessity of your being asked specific questions thereon?

Mr. WALKER. I do not think of anything that I could add.

Mr. PECORA. You think that your recollection has been completely searched out and exhausted by the questions that you have answered thereon?

Mr. WALKER. I think so.

Mr. PECORA. You still have a certain recollection of your having discussed at the outset with the associates of Blair & Co. in the original purchasing syndicate the desire of Blair & Co. to give to Mr. Fitzpatrick 2½ percent of the profits?

Mr. WALKER. Yes.

Mr. PECORA. You are firm in your recollection as to that?

Mr. WALKER. I am firm in my recollection.

Mr. PECORA. Despite the fact that all the other witnesses who represent participants in that original purchasing group have testified here that they had no such knowledge at any time of the reason why this 2½ percent of the profits was given to Mr. Fitzpatrick?

Mr. WALKER. Notwithstanding their testimony, I still stand by my recollection of it.

Mr. PECORA. And in connection with their testimony let me say to you that the transaction has been referred to in testimony before this committee as a "Santa Claus gift to Mr. Fitzpatrick", and you have been referred to as the person who put the Santa Claus whiskers on other members of the originating purchasing group. That is not true, is it?

Mr. WALKER. I never put anything on any group. I mean they all consented to it. No; I have not put any whiskers on anybody.

Mr. PECORA. Blair & Co., I think you said, were bankers for the Prairie Oil at one time?

Mr. WALKER. No.

Mr. PECORA. Were they bankers for the Sinclair Corporation?

Mr. WALKER. Yes.

Mr. PECORA. As such did you at any time have anything to do with the negotiations that eventuated in the consolidation of the Sinclair Consolidated Oil Corporation with the Prairie Gas & Oil Co.?

Mr. WALKER. I did at subsequent dates to this.

Mr. PECORA. What did Mr. Fitzpatrick have to do with any of those negotiations?

Mr. WALKER. I presume he was consulted by various people in connection with it. I know I consulted him.

Mr. PECORA. And in your consultation with him what attitude did he take with regard to the proposed consolidation?

Mr. WALKER. He always wanted a much higher price than Mr. Sinclair was ready to give on his side of it.

Mr. PECORA. Did he get the higher price?

Mr. WALKER. The negotiations were long dragged out.

Mr. PECORA. But did he get the higher price?

Mr. WALKER. I do not know whether you can say anybody got either a higher or lower price, because conditions were rapidly changing. Market conditions were getting worse. The Ajax Pipe Line had been built, or was in course of being built, which affected the Prairie Pipe Line seriously, and I think it was just purely a matter of negotiation, and I think that the largest factor in the ultimate decision was the Rockefeller interest.

Mr. PECORA. Now, Mr. Walker, you said that Mr. Fitzpatrick always wanted a higher price than Mr. Sinclair was willing to give. Did he get that higher price?

Mr. WALKER. I don't think that question can be answered just with a yes or no, because it was a question of negotiation, and naturally a man always negotiates to get a better price.

Mr. PECORA. As a result of negotiations or anything else, did he get the higher price that you have referred to as being what Fitzpatrick always wanted?

Mr. Walker. I think he got certainly a higher price than Mr. Sinclair was willing to pay, at the end; yes.

Mr. Pecora. That consolidation was consummated in March 1932 and was effected by an exchange of stock, was it not?

Mr. Walker. Yes.

Mr. Pecora. And what was the basis of exchange, the ratio of exchange?

Mr. Walker. As I remember, it was a share for share for Prairie Oil & Gas and a 1.4 shares for Prairie Pipe. In other words, Prairie Pipe——

Mr. Pecora (interposing). 1.4 shares of consolidated for one share of Prairie Pipe?

Mr. Walker. For one share of Prairie Pipe; yes.

Mr. Pecora. Now, Mr. Fitzpatrick testified that he was permitted to acquire some 9,000 shares of the common stock of the Sinclair Consolidated Oil Corporation from either the original purchasing syndicate or one or more of the members of that original purchasing syndicate at the ground-floor price of $30 per share. Do you know anything about that?

Mr. Walker. As I remember, it was exchanged on a basis of 5 shares for 3 shares.

Mr. Pecora. And the Sinclair shares were given a valuation of $30 per share in effecting that exchange?

Mr. Walker. I dont know what price he may have put on his books, but the current market prices were approximately 5 to 3. That was done on that basis as far as we were concerned. We were concerned in getting the best prices we could for our shares.

Mr. Pecora. Do you know why he got 5 to 3, whereas the other stockholders eventually received share for share?

Mr. Walker. It was at the market at the time.

Mr. Pecora. Which participant in the original purchasing group made that exchange with Mr. Fitzpatrick?

Mr. Walker. I think probably the group as a whole did, but I could not recollect that individual transaction.

Mr. Pecora. Are you sure it did not come out of the share of Blair & Co.?

Mr. Walker. I do not think so. because you see, Blair & Co., Inc., had no stock as such. They were members of the group, and this trade was made probably through the intermediary of Blair with the group.

Mr. Pecora. Do you know when that exchange was made with Mr. Fitzpatrick?

Mr. Walker. No.

Mr. Pecora. Was it before the closing of the purchasing syndicate account?

Mr. Walker. I really could not say.

Mr. Pecora. Who initiated the negotiations for that exchange, Mr. Fitzpatrick or the other parties?

Mr. Walker. I imagine Mr. Fitzpatrick, but I could not say. There is no reason why we should think of an odd amount like that.

Mr. Pecora. Now, at that time, was the market value of the Sinclair stock about 39?

Mr. Walker. I would have to know the date and the time of the transaction to look it up. I mean I really could not remember. If you could give me the date, we could look at those records and find out.

Mr. Pecora. I heard of it for the first time when Mr. Fitzpatrick told us this morning. Didn't you hear him give testimony to that effect?

Mr. Walker. Yes, I heard him give that this morning, but I mean I haven't thought of the thing until I heard of it this morning. It was just really a normal business transaction, practically exchanging at market values. He wanted Sinclair stock instead of Prairie stock.

Senator Couzens. When this consolidation was arranged what amount did the Prairie Gas & Oil figure they got for their properties?

Mr. Walker. Well, they got share for share.

Senator Couzens. I understand, but what was the aggregate value fixed?

Mr. Walker. I really don't remember.

Mr. Pecora. Do you remember what the book values were respectively of the Sinclair stock and the Prairie Oil stock in March 1932 when the consolidation was effected?

Mr. Walker. I would have to more or less guess at present, without looking it up, but I have the impression that before Sinclair wrote down certain of their assets, it was around $44. I may be entirely mistaken.

Mr. Pecora. For which stock?

Mr. Walker. For the Consolidated Oil stock.

Mr. Pecora. What was the book value of the Prairie Oil stock?

Mr. Walker. I really cannot remember that. I was not a director of Prairie then. I was a director of Sinclair.

Mr. Pecora. As an officer or director of the Sinclair Co., were you not interested in finding out whether or not an exchange was being effected on a basis that was fair and equitable to the stockholders of both companies, including your own?

Mr. Walker. Absolutely; but book value has absolutely nothing to do with it. I would not care what the books said. I would want to know what the values were.

Mr. Pecora. How did you determine the values, then, for the purpose of effecting that exchange?

Mr. Walker. We studied documents and documents and documents, report after report, for months on that thing.

Mr. Pecora. Did you consider market quotations?

Mr. Walker. No; not seriously. Of course, market quotations, for some reason or other, gradually work around, because markets more or less appraise current situations.

Mr. Pecora. That rather surprises me, Mr. Walker, in view of what you testified to this morning, that in your opinion the thing which controls the value, or gives the value to securities, is the price the public pays for them in the open market.

Mr. Walker. That is exactly what I thought I was saying now, because I think, for some reason or other, the public have an intuition that appraises relative situations remarkably well. I have had

so many experiences when I have seen the insiders marvel at the way a stock is going down. They don't know why, and they will wake up 6 months later and find the public was right, and the market quotation was right.

Mr. PECORA. Have you found that the public has been right in the market, as against the insiders? Has that been your experience?

Mr. WALKER. I think they have been just as right as the insiders. There is nothing like inside information to break anybody.

Mr. PECORA. From all I have understood, the public has been invariably wrong.

Mr. WALKER. So have the insiders.

Mr. PECORA. Who in the world has been right, then?

Mr. WALKER. The insiders have been just as wrong, Mr. Pecora.

Mr. PECORA. It is getting to be more of a mystery. That is all, Mr. Walker, unless you have something you would like to say to the committee.

Mr. WALKER. There is nothing I can think of. I have tried to give you as clear a remembrance of this situation as I can.

Mr. PECORA. I will say for you that you have remembered things that your associates seem to have been entirely ignorant of.

Mr. WALKER. I cannot help that. Thank you.

Mr. PECORA. Is Mr. Cutler here?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Will you be good enough to take the stand, Mr. Cutler?

TESTIMONY OF BERTRAM CUTLER, ROCKEFELLER FINANCIAL ADVISER

The CHAIRMAN. Mr. Cutler, you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God?

Mr. CUTLER. I do.

Mr. PECORA. What is your full name, Mr. Cutler?

Mr. CUTLER. Bertram Cutler.

Mr. PECORA. What is your business or profession?

Mr. CUTLER. I have been associated with the Rockefellers for a good many years, I assume, as financial adviser. I have no title.

Mr. PECORA. For how many years have you been so associated?

Mr. CUTLER. Thirty-two.

Mr. PECORA. You are still associated with them?

Mr. CUTLER. Yes.

Mr. PECORA. As a sort of financial adviser?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Some testimony has been presented to this committee today substantially to the effect that some time in 1928 the Rockefeller interests, so-called, as represented in certain trusts or foundations which had been created by the Rockefellers, sold some large holdings of stock that those foundations owned at that time, of the Prairie Oil & Gas Co. Do you know anything about those sales?

Mr. CUTLER. Yes, sir.

Mr. Pecora. When did they take place?

Mr. Cutler. I think sometime in November 1928.

Mr. Pecora. What volume or quantity of stock was so disposed of then?

Mr. Cutler. I think it was the entire amount owned by 3 or 4 of the so-called "Rockefeller charitable funds."

Mr. Pecora. We do not know what amount that is.

Mr. Cutler. Roughly, it was $38,000,000 worth, at the prices that have been testified to. I do not know the number of shares.

Mr. Pecora. Several hundred thousand shares?

Mr. Cutler. Oh, yes.

Mr. Pecora. Do you know to whom those shares were sold?

Mr. Cutler. To Blair & Co.

Mr. Pecora. Representing themselves, or a syndicate?

Mr. Cutler. Representing themselves, to my best knowledge.

Mr. Pecora. Did you have anything to do with the negotiations that resulted in that sale?

Mr. Cutler. I carried them on.

Mr. Pecora. When were they commenced? Having in mind that they terminated in the sale in November 1928, when did the negotiations commence?

Mr. Cutler. At least 6 months, I would say, ahead of that date. I do not know the date.

Mr. Pecora. At any time during the pendency of those negotiations did you have any conversations with Mr. William S. Fitzpatrick who, according to the evidence here, was at that time the president of the Prairie Oil & Gas Co.?

Mr. Cutler. I did.

Mr. Pecora. In those conversations did you discuss with him, or he with you, anything relating to the negotiations for the sale of that stock?

Mr. Cutler. I did.

Mr. Pecora. Was anything said between you in any of those conversations in which you indicated a desire on the part of the Rockefellers to reward, or pay, or give Mr. Fitzpatrick something out of profits that would accrue from the sale?

Mr. Cutler. I do not think I can answer the question just yes or no.

Mr. Pecora. Answer it in any way you want to.

Mr. Cutler. I believe the policy of our office has always been that we like to see the management of the different companies substantia stockholders in those companies. When the sale was consummated or being consummated, or talked about, to the best of my recollectio Mr. Fitzpatrick expressed to me a desire that if he had had mor time he would like to have bought some of the stock himself, an to the best of my recollection I did say to him that I thought th bankers would take him in the purchase.

Mr. Pecora. What prompted you to say that? Had you discusse it with the bankers?

Mr. Cutler. I had discussed it with the bankers. Whether befor or after that statement I do not know.

Mr. Pecora. When you made that statement to Mr. Fitzpatric had you had any discussion with the bankers with respect to takin care of Mr. Fitzpatrick?

Mr. CUTLER. The expression "taking care of" him I do not just understand. This was one of a number of other sales that I had made to these same bankers, and I believe in those sales, as I believe Mr. Walker testified, in most instances the management of the company were given a chance to participate in the purchase of a large amount of stocks, not by the Rockefellers, but by the bankers who bought it. As a matter of policy, believing, as I said, that it was a good thing for the corporations and the stockholders both to have the management substantially interested in the stock, we were glad enough to see them do it.

Mr. PECORA. Did Mr. Fitzpatrick come to you, in the course of those negotiations, and indicate to you a desire on his part to be permitted to participate in the purchase of those shares that were held by the Rockefeller trusts?

Mr. CUTLER. I think he did.

Mr. PECORA. Did you refer him, then, to the bankers with whom you were negotiating to sell the shares?

Mr. CUTLER. I think I did.

Mr. PECORA. Did you say to Mr. Fitzpatrick at any time in words, substance, or effect, that the Rockefeller interests would see to it that he, Fitzpatrick, received something out of any profits that would accrue to anybody from the purchase or sale of those shares of the Prairie Oil & Gas Co. stock which the Rockefeller trusts then had?

Mr. CUTLER. No, sir, I don't believe so.

Mr. PECORA. Do you know whether Mr. Fitzpatrick acquired, either through the bankers or through any other sources, or through his own devices, any of the shares that were sold by the Rockefeller trusts to Blair & Co.?

Mr. CUTLER. I do not know. I assume that he did. I do not know.

Mr. PECORA. How many times did you talk with Mr. Fitzpatrick on that subject during the pendency of those negotiations?

Mr. CUTLER. I could not tell.

Mr. PECORA. More than once?

Mr. CUTLER. Oh, yes.

Mr. PECORA. Did you eventually refer him to the bankers?

Mr. CUTLER. I think I referred him to the bankers.

Mr. PECORA. Before you did that, did you yourself discuss with the bankers the matter of permitting Mr. Fitzpatrick, through them, to acquire some of this Prairie Oil stock that the trusts were about to dispose of?

Mr. CUTLER. I doubt if I did it until the actual sale had taken place.

Mr. PECORA. Have you any clear recollection about that, Mr. Cutler?

Mr. CUTLER. I think it is pretty clear; yes.

Mr. PECORA. When the sale took place, did you have any talk with the bankers about permitting Mr. Fitzpatrick to acquire some of the stock?

Mr. CUTLER. Yes, I think I did.

Mr. PECORA. With whom?

Mr. CUTLER. I think it was with Mr. Hunter Marston.

Mr. PECORA. What was the substance of that talk?

Mr. CUTLER. I would say it was that I assumed that as they were becoming large stockholders in the company, if Mr. Fitzpatrick wanted an interest in it, we would be glad if they saw fit to give him one, my idea being that he was going to be allowed to buy the stock on the same basis they were buying, or about the same basis.

Mr. PECORA. Did Mr. Marston indicate that they would give that privilege to Mr. Fitzpatrick?

Mr. CUTLER. I think he said they would be very glad to.

Mr. PECORA. Did you learn at any time since whether Mr. Fitzpatrick was permitted to acquire any of the stock on the original terms of sale to Blair & Co.?

Mr. CUTLER. No, sir. I was practically through with it when that happened.

Mr. PECORA. Did the Rockefeller interests, so far as you know, have any desire, or express to anyone any desire to see Mr. Fitzpatrick receive any share of profits that accrued to the bankers from the purchase by them of this Prairie Oil stock from the Rockefeller trusts?

Mr. CUTLER. Is not that the same question? Will you repeat it?

(The reporter read the pending question.)

Mr. CUTLER. I thought I answered that before. My best recollection is that, knowing the attitude of our office, that it was a good thing for the management of a company to be interested in the stock, we hoped, or suggested, perhaps, or I suggested, that if Mr. Fitzpatrick wanted an interest in that stock, he should be allowed to have it. I could not control it. I had nothing to say about it. If they did not want him to, that was the end of it, but we would not object.

Mr. PECORA. Did you have any knowledge, in October or November of 1928, or any time subsequently, of the formation of a purchasing syndicate to buy 1,130,000 shares of the treasury stock from the Sinclair Consolidated Oil Corporation?

Mr. CUTLER. I knew nothing about it at all, except I guess it wa a common rumor around the street that there was what you call a syndicate in the stock, but I knew nothing about it.

Mr. PECORA. Did you indicate to anyone at that time that yo or the Rockefeller interests would like to see Mr. Fitzpatrick obtai a share of any profits that would accrue to any such syndicate fror its purchase and sale of these shares of stock of the Sinclair Co.?

Mr. CUTLER. I did not even know there was a syndicate.

Mr. PECORA. At any time that you had any conversation with Mr Fitzpatrick in connection with the contemplated sale by the Rocke feller trusts to Blair & Co. of the Prairie Oil Co. stock, was anythin said about giving Mr. Fitzpatrick a 10 percent interest in anything

Mr. CUTLER. I do not recall the 10 percent.

Mr. PECORA. Do you recall any specific amount of interest i profit being discussed between you and Mr. Fitzpatrick?

Mr. CUTLER. I would have nothing to do with the percentage. A I would have to do, as I said, was to tell them that as far as I wa concerned I would be glad to see, if he wanted an interest, that h had it. I don't believe I said 10 percent, or 5 percent, or anythin That was for them to decide.

Mr. PECORA. To what did the 10 percent apply, in your mind?

Mr. CUTLER. I do not know about any 10 percent.

Mr. PECORA. Nothing was ever said to you about 10 percent by Blair & Co., or by Mr. Fitzpatrick, or by anybody else?

Mr. CUTLER. To the best of my knowledge no amount was fixed. I did not negotiate anything with them, whether it would be 10 percent, or 5 percent, or any percentage.

Mr. PECORA. Did the Rockefeller interests own any shares of the Sinclair Consolidated Oil Corporation in October 1928?

Mr. CUTLER. The so-called "charitable funds" that you are mentioning did not.

Mr. PECORA. Did any other interests known as the Rockefeller interests, that might properly be so designated, have any such holdings of stock at that time?

Mr. CUTLER. To the best of my knowledge at that time they did not. I would not be sure of that, though.

Mr. PECORA. Do they today hold any such stock?

Mr. CUTLER. A large amount.

Mr. PECORA. How large?

Mr. CUTLER. A very substantial amount. I cannot give you the number. It is the amount Mr. Rockefeller, Jr., might have received for stock of the Prairie Co. that he owned.

Mr. PECORA. At the time of the consolidation in March 1932.

Mr. CUTLER. Yes.

Mr. PECORA. Do you know how much of the Prairie Oil stock he owned then?

Mr. CUTLER. No, but I would roughly guess that the whole thing is 1,000,000 shares, or around there.

Mr. PECORA. That is, at the present time?

Mr. CUTLER. Yes.

Mr. PECORA. One million shares of the Consolidated Corporation?

Mr. CUTLER. I assume so.

Mr. PECORA. Did you represent the Rockefeller interests in any negotiations that led to that consolidation in March 1932?

Mr. CUTLER. I did.

Mr. PECORA. What were those negotiations?

Mr. CUTLER. In 1932?

Mr. PECORA. Or at any time. I am referring to the negotiations that culminated in the consolidation in March 1932. I am not fixing that date as the date of the negotiations, but the date of the happening of the event which marked the culmination of the negotiations.

Mr. CUTLER. I cannot tell you the date that the first talks of the consolidation of the Prairie Oil and the Prairie Pipe with the Sinclair Oil took place, but to the best of my knowledge it was not until nearly early 1932.

Mr. PECORA. Not until when?

Mr. CUTLER. About the first of 1932.

Mr. PECORA. Had you heard of negotiations having been instituted long prior to 1932?

Mr. CUTLER. No, sir.

Mr. PECORA. It has been testified to here that those negotiations progressed off and on over a period of 5 years prior to March 1932.

Mr. CUTLER. But I do not think testified that it was with me.

Mr. PECORA. No; but you first heard of it sometime in the early part of 1932?

Mr. Cutler. They have all kinds of rumors around Wall Street, but the first time we considered it at all, to the best of my knowledge, would be probably the first of 1932, probably 6 or 8 months, at most, before they were consummated.

Mr. Pecora. With whom did you have any conversations in behalf of Mr. Rockefeller with respect to the proposed consolidation?

Mr. Cutler. With Mr. Fitzpatrick, with Mr. Hunter Marston, with Mr. Henry Lockhart, with associates of my own office, our private counsel, with oil experts that we might have called in to see if we could figure out what was a fair basis of the merger.

Mr. Pecora. What was the total number of shares outstanding at that time of the Prairie Oil & Gas Co.?

Mr. Cutler. I am sorry I cannot tell you.

Mr. Pecora. What proportion do you think the Rockefellers owned of the outstanding stock?

Mr. Cutler. At the time of the merger? I would have to guess. Eleven, twelve, or fourteen percent, just as a guess. I do not know. Maybe less.

Mr. Pecora. In your 30 years or so of experience as financial adviser to the Rockefellers, would you say that that proportion of stock interest gave them a management control?

Mr. Cutler. I would say that is a very much debated question as to what gives control. Some people say 10 percent does. Some say it takes 55. I do not know.

Mr. Pecora. I assume your opinion on that would be worth more than the average man's, in view of your 30 years' experience as financial adviser to the Rockefellers. Might I ask, then, your opinion about it?

Mr. Cutler. I would think 10 or 15 percent would have quite a weight in the management of the company, but not control.

Senator Couzens. It would depend upon who organized the proxies, would it not, as to who had control?

Mr. Cutler. It would depend on who voted the proxies, I guess

Senator Couzens. We have heard of experiences where the solicitors for the proxies usually voted for them. You mean, then, I understand, that if an owner of 14 or 15 percent of the stock attempted to organize control by the solicitation of the proxies, he could probably get proxies; is that correct?

Mr. Cutler. It would depend upon who the owner of the 14 or 15 percent was.

Senator Couzens. You testified a while ago that an owner of 14 or 15 percent would be a big factor in the control.

Mr. Cutler. Yes, sir.

Senator Couzens. At that time you did not make any discernment as to who owned the stock. Now I understand you qualify your answer by saying it would depend on who owned the stock, as to whether they would be a big factor in getting control. Is that right?

Mr. Cutler. I would think that the standing of the person who had that much stock, in asking for proxies, would have great weight.

Senator Couzens. That happened to be true in the case of the Standard Oil Co. of Indiana, did it not?

Mr. Cutler. That is just about the percentage there, I think.

Mr. PECORA. Mr. Cutler, you learned eventually, did you not, that Mr. Fitzpatrick had received something like $300,000?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Out of the profits that accrued to this purchasing syndicate in the Sinclair Oil stock deal.

Mr. CUTLER. Yes, sir.

Mr. PECORA. When did you first learn of it?

Mr. CUTLER. Yesterday.

Mr. PECORA. Never heard of it before that?

Mr. CUTLER. Never heard of it before. Yesterday or the day before.

Senator COUZENS. Was it a surprise?

Mr. CUTLER. Very much of a surprise; yes, sir.

Mr. PECORA. Had you learned of it at the time it happened would you, as the financial adviser of interests that owned around 14 percent of the stock of the company of which Fitzpatrick was president, have approved of it?

Mr. CUTLER. I do not think I could approve of it; no, sir.

Senator COUZENS. Do you know any reason for having kept it secret for all these years?

Mr. CUTLER. I know nothing about it.

Senator COUZENS. Can you conceive of any reason for keeping it secret all this time?

Mr. CUTLER. No. I cannot think of any reason for publishing it, if that will answer the question.

Senator COUZENS. Well, that is a reverse answer. But apparently there was an effort, was there not, to keep the payment secret?

Mr. CUTLER. Well, now you are asking me something which I had nothing to do with whatsoever. I did not even know there was a syndicate. I did not even know there was a payment.

The CHAIRMAN. What would be your objection to his receiving it? You said you would not have approved it, you think. What would be your objection to his receiving this donation?

Mr. CUTLER. I don't know as I would have any objection if somebody wanted to give him $300,000.

Senator COUZENS. Would it not depend on who the giver was?

Mr. CUTLER. If it was my money that was given it might; yes. If it was not——

Senator COUZENS. If you were interested in a corporation and a competitor came along and gave your management $300,000 would you not be interested?

Mr. CUTLER. I had not from reading the testimony understood that the corporation gave him $300,000. I thought some banking group gave it.

Mr. PECORA. Well, a banking group, or a purchasing group, rather, that included the Chase Securities Corporation, one of the officers of which, namely, Mr. Clarkson, was at that time a director of the Sinclair Co.; that included Blair & Co., the president of which at that time was also a director of the Sinclair Oil Corporation; and that included Mr. Harry F. Sinclair, who at that time was chairman of the board of directors of the Sinclair Oil Corporation—with that knowledge would you have approved of it?

Mr. Cutler. I do not see why I should be asked if I approve of it. I do not know whether I follow your question. I do not see that I am interested in it.

Mr. Pecora. Well, now, in answer to my question you said that had you known at the time that payment was made to Fitzpatrick that it was to be made you would not have approved of it. Following that, Senator Fletcher asked you why you would not have approved of it. I do not believe you have yet answered Senator Fletcher's question.

Mr. Cutler. The question being why would I not approve of it?

Mr. Pecora. Yes.

Mr. Cutler. Well, I do not just recall the question before that I did answer. I thought I had—I do not see why I should be asked to approve of it. I do not know just what you mean.

Mr. Pecora. Well, I asked you the question specifically to the effect: Had you known at the time this payment was made to Mr. Fitzpatrick of the making of such payment would you have approved of it, and you answered no.

Mr. Cutler. Well, had I been in the position of a lot of the people making the payment, I certainly would not have approved of it. But I was not a director of the Consolidated Oil or a member of the Syndicate, or anything.

Mr. Pecora. You were the financial adviser of the owners of about 14 percent of the stock of the Prairie Oil Co., which was the company of which Mr. Fitzpatrick was president at that time?

Mr. Cutler. Yes.

Mr. Pecora. Now, having in mind that the Prairie Oil Co. at that time was a competitor, to a certain extent, in the producing field of the Sinclair Consolidated Oil Co., would you have approved of the president of your company, meaning the Prairie Co., receiving——

Mr. Cutler (interposing). Now you are putting it in a different way. No.

Mr. Pecora (continuing). Receiving from interests that included executive officers and directors of the Sinclair Corporation or making of a payment by the latter to Mr. Fitzpatrick of $300,000, or any sum?

Mr. Cutler. The answer is, certainly "No", if you put it that way.

Mr. Pecora. For what reason? Now, I will ask Senator Fletcher's question of you. For what reason would you have disapproved of it?

Mr. Cutler. Why, I would not think the president of my company had a right to take the payment from some other company.

Mr. Pecora. Well, that is an answer.

Senator Couzens. That is what we expected, and it was a long time getting it.

Mr. Cutler. Well, Senator, I am sorry, but I did not understand just what you were asking.

Mr. Pecora. I think that is all with Mr. Cutler.

The Chairman. Mr. Cutler, may I ask you if the interests that you represented felt under any obligation or inclined in any way to obtain or secure for Mr. Fitzpatrick some special reward on account

of his long services and help in connection with the companies in which you were interested?

Mr. CUTLER. I cannot say what they might have felt. I do not ever remember it being expressed to me.

The CHAIRMAN. That question did not come up at all?

Mr. CUTLER. No.

Mr. PECORA. I have no further questions of Mr. Cutler.

The CHAIRMAN. That is all, Mr. Cutler.

(Thereupon Mr. Cutler left the witness stand.)

TESTIMONY OF WILLIAM SAMUEL FITZPATRICK, VICE CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CONSOLIDATED OIL CO.—Resumed

Mr. PECORA. Mr. Fitzpatrick, I see you rising to your feet as Mr. Cutler leaves the stand.

Mr. FITZPATRICK. Yes.

Mr. PECORA. You wish to say something to the committee?

Mr. FITZPATRICK. I think I have a better recollection of some things than Mr. Cutler seems to have.

Mr. PECORA. I have not heard what you said, but perhaps if you take the witness stand again we may hear you.

The CHAIRMAN. Do you care to make any further statement, Mr. Fitzpatrick?

Mr. FITZPATRICK. Mr. Cutler is mistaken if he says he never heard of the consolidation until 1932 with Sinclair. I talked to him myself about it.

Mr. PECORA. When for the first time?

Mr. FITZPATRICK. Oh, when it first came up.

Mr. PECORA. Back in 1928?

Mr. FITZPATRICK. In 1928. Mr. Cutler's memory fails him if he says he never heard of my participation in the profits of the Blair syndicate.

Mr. PECORA. Do you mean by the Blair syndicate the original purchasing syndicate of the Sinclair stock?

Mr. FITZPATRICK. Blair. Because I remember distinctly telling Mr. Cutler that these people had been very nice to me and I appreciated it—that they had managed to pay me more out of this than my combined salary the twenty-some years I had been working with the company.

Senator COUZENS. What did Mr. Cutler say when he found that you had taken $300,000 from a competing organization?

Mr. FITZPATRICK. I did not take it from a competing organization. I took it from the bankers, and I thought, and I believe, and I know that the suggestion that I get something—not 10 percent, not $300,000—I do not believe anybody thought there was $300,000 in it, or anything like the amount of profit there was in it—but I know that I got the idea from Mr. Cutler that I should have something out of it, or that they would give me something out of it. I know that when I talked to Mr. Marston that Mr. Marston had talked to Mr. Cutler about it or Mr. Cutler had talked to Mr. Marston about it. I know that I would not have done that or anything else and I did not do anything else in connection with this consolidation until it was approved by Mr. Cutler.

Senator COUZENS. And yet Mr. Cutler testifies——

Mr. FITZPATRICK (interposing). I do not care what Mr. Cutler testifies about. I say I know Mr. Cutler's memory is not good.

Mr. PECORA. Mr. Fitzpatrick, according to your recollection when did you tell Mr. Cutler for the first time that you had received this $300,000 from that purchasing syndicate?

Mr. FITZPATRICK. Probably the first time I saw him after I had received it.

Mr. PECORA. That was shortly after April 1929?

Mr. FITZPATRICK. No. I went West, as I say, shortly after I received it, and was gone several weeks, and the first time I got back to New York I went in to see Mr. Cutler.

Mr. PECORA. Well, within a month or two after you had received it?

Mr. FITZPATRICK. A few months after I received it. Some few months afterwards.

Mr. PECORA. It would appear, Mr. Fitzpatrick, from the facts that have been developed here that the Rockefeller interests had nothing to do with the organization of that purchasing syndicate.

Mr. FITZPATRICK. I understand that is so.

Mr. PECORA. Do you know why Mr. Cutler then should have had any part in any conversations that led to your receiving a share of the profits of that syndicate?

Mr. FITZPATRICK. At that time and up to that time everything that had been said to me by Mr. Cutler or anybody else in Mr. Rockefeller's office, or by Mr. Rockefeller himself, indicated that they were very friendly to me, and that everything I had done in connection with the management of the Prairie Co. had their approval. Down to this day there has only been one criticism, and I think that was removed. Now, I believe, as I said this morning, that they were very friendly to me. And I believe that they—I knew that they knew something of my financial condition. And I believed that they wanted these people to do something for my benefit. I wondered then and have ever since why if they felt that way they asked somebody else to do it instead of doing it themselves.

Mr. PECORA. You have not found an answer to that?

Mr. FITZPATRICK. I have not found an answer to it.

Senator COUZENS. You did not get an answer today, either, did you?

Mr. FITZPATRICK. I did not get an answer today. And I am astonished more than you gentlemen are.

Now, another proposition. It has been intimated by this committee that this participation of mine was kept secret. It was not kept secret. It figured in my income taxes the year I received it. It was talked over with my associates in the Prairie Oil & Gas Co. and approved by them. They understood it then, they understand it now, and at all times have understood it.

Senator COUZENS. How do you account for this conflicting testimony then?

Mr. FITZPATRICK. I am not able to account for it. If I could account for it I would not be here disputing it.

Mr. PECORA. Mr. Fitzpatrick, how do you account for Mr. Arthur W. Cutten, Mr. Harry F. Sinclair, and Mr. Albert H. Wiggin having apparently been ignorant of the reason why you received this $300,000 from the purchasing syndicate of which they were members?

Mr. FITZPATRICK. I do not account for it. I never had any conversation with any of them about it, and I know nothing about it. It was fixed up by Blair & Co., and I supposed everything was fixed up right and that everybody knew it and that it was satisfactory all around. I got the money from them. I did not ask them how much it was. I never asked for an accounting. I never asked for a statement as to the operations of the syndicate. I never asked for anything. And I got it. And I got into this thing here at the suggestion of Mr. Cutler and Mr. Marston, and whatever you gentlemen see fit to believe, whatever the public may believe, if it is to my detriment it is too bad. But I am going to see that the truth is laid before you.

Mr. PECORA. That is all we want.

Mr. FITZPATRICK. I do not care who disputes it. Mr. Cutler is an important man. Mr. Cutler represents perhaps the most powerful influence in this country—possibly in the world. I served them for twenty-some years, and I have never heard anything fall from the lips of anybody connected with the Rockefeller organization, until I heard this testimony, that impaired my respect for or confidence in them.

Now when I told Mr. Cutler that these people have been very good to me and I appreciated it—in fact they had carried me in this matter and made me more money than my combined salary, or approximately the amount of my combined salary for the years that I have been with the Prairie Oil & Gas Co., I don't remember why it was, but he said "I would not say anything about that." That is the first intimation I ever had or the first time it ever occurred to me that anybody might think there was anything wrong about my taking that money from Blair & Co.

Mr. PECORA. Who said to you you shouldn't say anything about it?

Mr. FITZPATRICK. Mr. Cutler.

Mr. PECORA. That was when you first told him that you had received that money?

Mr. FITZPATRICK. Yes, sir. When I told him how much it was.

Mr. PECORA. Now, when you were out in Excelsior Springs some 2 weeks ago with Mr. Sinclair were you surprised to know that he was ignorant of the reasons why you got that $300,000 out of that purchasing syndicate's profits?

Mr. FITZPATRICK. I naturally was. Naturally was surprised.

Mr. PECORA. His ignorance of the fact seemed genuine to you, did it?

Mr. FITZPATRICK. It did. It did. It did. Because I thought I could understand how he might not have known all about it. He said he did not. He asked me and I told him the story about Mr. Cutler and my conversation with Mr. Cutler and Mr. Marston.

Mr. PECORA. Now, Mr. Fitzpatrick, you exchanged your shares of Prairie Oil & Gas Co. for shares of the Sinclair Co.——

Mr. FITZPATRICK. Yes.

Mr. PECORA (continuing). Some time in 1929?

Mr. FITZPATRICK. 1928 we made the arrangement.

Mr. PECORA. And it was consummated in February 1929?

Mr. FITZPATRICK. Yes, sir.

Mr. PECORA. Did you at that time in your transaction part with all your holdings of Prairie Oil?

Mr. FITZPATRICK. No.

Mr. PECORA. A substantial part of them?

Mr. FITZPATRICK. A substantial part of them, yes.

Mr. PECORA. And you exchanged them for shares of the common stock of the Sinclair Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Which then was more or less of a competing company?

Mr. FITZPATRICK. Well, in a measure. But the general discussion that was going on indicated that the Sinclair contemplated a dividend of $3 a share. I knew that that was all that the Prairie Oil could pay, if they could pay that much. I knew that I would receive, pending the further negotiations for the consolidation, dividends on 5 shares at $3 a share instead of on 3 shares of Prairie at $3 a share. I wanted those additional dividends. I got them. And I paid my income tax on that additional income.

Senator COUZENS. Did Mr. Rockefeller know that you exchanged the stock in a corporation in which he had a big interest for stock in a competing company?

Mr. FITZPATRICK. I am quite sure Mr. Rockefeller did not know it.

Senator COUZENS. Did Mr. Cutler know it?

Mr. FITZPATRICK. I am quite sure that Mr. Cutler did not know it. I did not tell either one of them. It never occurred to me that it was any of their business.

Mr. PECORA. Did you tell any of the directors of the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Oh, yes. I told the directors of the Prairie Oil & Gas Co., and several of the boys in both companies made the same exchange, at the same time and in the same way.

Mr. PECORA. Were the Rockefeller interests represented on the board of directors of the Prairie Oil & Gas Co. at that time?

Mr. FITZPATRICK. Well, they were represented; yes. I represented the Rockefellers more thoroughly than I did anybody else, because there was no question of policy that I remember ever having come up that I did not try to find out whether they approved it or not. Now, we had those negotiations with Mr. Sinclair and his people all through 1929, and finally we broke up. In 1930 we were unable to get together. And there were other complications. Mr. Sinclair was about to sell or get rid of his interest in another pipe line. We waited for that. He did it. After he did it and about the time he did it we began to hear rumors of the building of the Ajax Pipe Line, and the Ajax Pipe Line took away from us—and this acquisition of full ownership of the pipe line by the Indiana company, took away from us about 70,000 to 75,000 barrels a day of business. The building of the Ajax Pipe Line took away about 20,000 barrels a day of the New Jersey company. And at the same time it took away about 6,000 barrels as I remember it of the Pure Oil Co., that went into the Ajax Pipe Line. And it took away about 40,000 barrels a day that was going to the Standard Oil Co. of Ohio——

Senator COUZENS (interposing). After you had made your exchange or purchase——

Mr. FITZPATRICK (continuing). That made a difference in the set-up, in the division or value of the property.

Mr. PECORA. At the time you effected that exchange of your holdings of Prairie Oil for shares of the Sinclair Company, on the basis

of 5 shares of Sinclair stock for 3 shares of Prairie Oil stock, negotiations had already been in progress looking to a general consolidation of the two companies, had there not?

Mr. FITZPATRICK. They were in the preliminary stages.

Mr. PECORA. Yes. Now, at any time in those preliminary stages, or particularly at the time when you effected the exchange of your shares of Prairie Oil on the basis of 5 to 3 for shares of Sinclair Oil, did the Sinclair people indicate that they would be willing to make the same kind of exchange with the other stockholders of the Prairie Oil?

Mr. FITZPATRICK. Yes, with the other officers.

Mr. PECORA. Oh. Only with the officers, and not with the general body of the stockholders?

Mr. FITZPATRICK. No; and that was limited to 20,000 shares.

Mr. PECORA. And that offer was held out only to the officers of the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Yes, sir.

Mr. PECORA. Did other officers beside yourself avail themselves of the offer?

Mr. FITZPATRICK. Yes; they did.

Mr. PECORA. All of them?

Mr. FITZPATRICK. Not all of them.

Mr. PECORA. Which of them did so?

Mr. FITZPATRICK. Mr. Moody, Mr. Kelsey, and I think Mr. Wilhelm. I am not sure whether Mr. Wilhelm did or not, but there were several that did.

Mr. PECORA. Was the fact of such exchanges, made known by you or any other officers of the Prairie Oil & Gas Co. to the stockholders at the time that the negotiations were finally concluded on a share-for-share basis?

Mr. FITZPATRICK. We didn't send out any letter to the stockholders: no.

Mr. PECORA. Well, did you indicate the fact to the stockholders of the company in any form?

Mr. FITZPATRICK. But there was no effort on anybody's part so far as I know to conceal it.

Mr. PECORA. But was the information given to the stockholders?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Was there anything affirmatively done, in other words?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. I mean to inform the stockholders of the deal that the officers had obtained for themselves.

Mr. FITZPATRICK. I don't know.

Mr. PECORA. What was that answer?

Mr. FITZPATRICK. I don't know.

Senator COUZENS. Doesn't it appear to you, Mr. Fitzpatrick, that while doing this you were really scuttling your ship with the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. It did not.

Senator COUZENS. It would seem to me that if I owned 15 percent of a company and my officers were exchanging their stock for stock of a competing company I would consider that my ship was being scuttled.

Mr. Fitzpatrick. It was not being scuttled. No, it was not being scuttled, and I am sorry that you gentlemen want to try a lawsuit that is pending out in Kansas. But if you do we will just have to try it here.

Senator Couzens. I did not know there was a lawsuit pending out there.

Mr. Fitzpatrick. Well, there is a lawsuit pending in Kansas.

Senator Couzens. About what?

Mr. Fitzpatrick. A very few stockholders, something like 1 percent or 1½ percent of the stockholders, are complaining that they did not get as much as they should have gotten in this deal. Now——

The Chairman (interposing). Where does the Ajax pipe line run?

Mr. Fitzpatrick. It runs from about the Cushing field——

The Chairman (interposing). Where is that field?

Mr. Fitzpatrick. In Oklahoma, south and west of Tulsa some fifty miles, to a point on the Mississippi River near Alton, Ill.

The Chairman. Who were the people behind the Ajax pipe line, I mean the principal people in it?

Mr. Fitzpatrick. Who are the people?

The Chairman. Yes.

Mr. Fitzpatrick. My understanding is, and it is only a general understanding, that the Standard Oil Co. of New Jersey——

The Chairman (interposing). What is that?

Mr. Fitzpatrick. The Standard Oil Co. of New Jersey, the Standard Oil Co. of Ohio, and the Pure Oil Co. are the people.

The Chairman. Those companies are not antagonistic to the Rockefeller interests, are they?

Mr. Fitzpatrick. I never suspected it, or thought of any antagonism.

Senator Couzens. Are you through with Mr. Fitzpatrick now, Mr. Pecora?

Mr. Pecora. Yes, sir.

The Chairman. That is all, Mr. Fitzpatrick.

(Thereupon the witness, Fitzpatrick, left the committee table.)

The Chairman. Who will you have next, Mr. Pecora?

Mr. Pecora. Mr. Sinclair, I wish to ask you just 2 or 3 questions.

TESTIMONY OF HARRY F. SINCLAIR—Resumed

Mr. Pecora. Mr. Sinclair, if my recollection of the evidence here serves me right, there is some proof that in connection with the formation of this purchasing syndicate relating to the 1,130,000 shares of the Sinclair Consolidated Oil Corporation stock, you agreed to take down 130,000 shares of that block, is that correct?

Mr. Sinclair. That is correct.

Mr. Pecora. And did you take that block down?

Mr. Sinclair. I did.

Mr. Pecora. At $30 a share?

Mr. Sinclair. Yes, sir.

Mr. Pecora. Did that go to reduce, or was that on account of your original participating interest in the syndicate?

Mr. Sinclair. I think not.

Mr. PECORA. Then virtually the interest of the participants in that syndicate was an interest in the purchase of 1,000,000 shares rather than in the purchase of 1,130,000 shares of stock?

Mr. SINCLAIR. I cannot say. Is that correct [addressing his attorney, Mr. Ragland]? Mr. Pecora, it was a part of the interest on the whole, but I bought back or had the right to buy back 130,000 shares.

Mr. PECORA. Then that left an original interest of the participants undiminished?

Mr. SINCLAIR. I would say their percentage of what was left was the same.

Mr. PECORA. You say their percentage of what was left was the same?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. But what was left was simply 1,000,000 shares?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Why was that done?

Mr. SINCLAIR. I asked the privilege of purchasing it.

Mr. PECORA. Well, for what reason?

Mr. SINCLAIR. For what reason?

Mr. PECORA. Yes. There must have been some special purpose in your mind.

Mr. SINCLAIR. I wanted the shares.

Mr. PECORA. For what reason? And did you hold them?

Mr. SINCLAIR. I sold a part of them, and I held a part of them.

Mr. PECORA. To whom did you sell a part of them?

Mr. SINCLAIR (after consulting Mr. Ragland). I sold 75,000 of those shares to a company of my own, the Hyva Corporation.

The CHAIRMAN. At what price?

Mr. SINCLAIR. At the same price, $30 a share.

Senator COUZENS. Is that your private holding company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. I have no other questions to ask Mr. Sinclair.

Mr. SINCLAIR. Shall I remain here, Mr. Pecora?

The CHAIRMAN. Then you gave away quite a few of those shares to different friends and associates?

Mr. SINCLAIR. What was that question, Mr. Chairman?

The CHAIRMAN. You distributed quite a few of those shares to others.

Mr. SINCLAIR. I did not give them away, but I gave some participations, for quite a number of the shares, I think about half or something of that sort.

Shall I remain here tomorrow?

Mr. PECORA. No.

The CHAIRMAN. That is all, then, Mr. Sinclair.

(Thereupon the witness, Sinclair, left the committee table.)

Mr. PECORA. Mr. Chairman, I do not think that we need Mr. Cutten in further attendance here, or the other witnesses on this phase. I think this concludes the investigation of the so-called "Sinclair Consolidated Oil Corporation syndicate."

The CHAIRMAN. All right. Who will you have next, Mr. Pecora?

Mr. PECORA. Is Mr. S. R. Burns here?

Mr. BURNS. Yes, sir.

The CHAIRMAN. Mr. Burns, please stand, hold up your right hand, and be sworn: You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God.

Mr. BURNS. I do.

TESTIMONY OF SAMUEL R. BURNS, JERSEY CITY, N.J., PRESIDENT OF THE INTERNATIONAL PROJECTOR CORPORATION

Mr. PECORA. Mr. Burns, what is your full name?

Mr. BURNS. Samuel R. Burns.

Mr. PECORA. Talk a little louder.

Mr. BURNS. Samuel R. Burns.

Mr. PECORA. And what is your office or home address?

Mr. BURNS. Jersey City, N.J.; 100 Glenwood Avenue.

Mr. PECORA. Talk a little louder, please.

Mr. BURNS. I will try. I have quite a severe cold.

Mr. PECORA. What is your business or occupation?

Mr. BURNS. I am president of the International Projector Corporation.

Mr. PECORA. When did you become the president of that corporation?

Mr. BURNS. Some time in March of 1932.

Mr. PECORA. At whose suggestion did you become its president?

Mr. BURNS. Well, I don't know at whose suggestion it was, but it was by a vote of the board of directors.

Mr. PECORA. Who first spoke to you about becoming the president of that corporation?

Mr. BURNS. I do not believe anybody spoke to me about it.

Mr. PECORA. Had you been an officer of the corporation before that time?

Mr. BURNS. Yes, sir.

Mr. PECORA. What office did you hold in it?

Mr. BURNS. Vice president and secretary.

Mr. PECORA. Were you a stockholder of it?

Mr. BURNS. No, sir. The General Theaters Equipment Corporation is the owner of virtually 100 percent of the stock.

Mr. PECORA. You know Mr. Harley Clarke, don't you?

Mr. BURNS. Yes, sir.

Mr. PECORA. How long have you known him?

Mr. BURNS. For over 10 years.

Mr. PECORA. Do you recall that sometime in 1925 the International Projector Corporation, through moneys that it realized from the issuance and sale of its securities, acquired the assets of a projector company called "Nicholas Power Co., Inc.", for the sum of $690,777.78?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you have anything to do with that transaction, Mr. Burns?

Mr. BURNS. Well, I was the nominee of the clearing house for that transaction.

Mr. PECORA. At whose request did you become such nominee?

Mr. BURNS. I haven't the slightest idea.

Mr. PECORA. What was your business or occupation at that time?

Mr. BURNS. I was president of the Nicholas Power Co., Inc.

Mr. PECORA. You were then the president of the Nicholas Power Co., Inc.?

Mr. BURNS. Yes, sir.

Mr. PECORA. Do you know at whose instance you became its president?

Mr. BURNS. Well, I was made its president by virtue of the action of the board of directors.

Mr. PECORA. We know that. I mean, you do not have to tell us that. That is the legal effect of the thing. But who asked you, or who was instrumental in having you made its president?

Mr. BURNS. The largest stockholders.

Mr. PECORA. And who were they?

Mr. BURNS. Well, one was Mrs. Frank H. Richardson. She was probably the largest stockholder.

Mr. PECORA. Yes; and who else?

Mr. BURNS. Mrs. Stuart.

Mr. PECORA. Did you say Mrs. Stuart?

Mr. BURNS. Yes; Mrs. S-t-u-a-r-t.

Mr. PECORA. Yes. Now, what other stockholders do you recall?

Mr. BURNS. There were two others, two maiden ladies named Griffith, G-r-i-f-f-i-t-h.

Mr. PECORA. And what was the name of the other maiden lady?

Mr. BURNS. They were both maiden ladies.

Mr. PECORA. But what was the name of the other one?

Mr. BURNS. They were sisters.

Mr. PECORA. Oh, they were sisters.

Mr. BURNS. Yes, sir.

Mr. PECORA. Were there any other stockholders in this Nicholas Power Co., Inc.?

Mr. BURNS. Yes; Mrs. Rose Power, the widow of Nicholas Power.

Mr. PECORA. And do you recall any other stockholders?

Mr. BURNS. No—yes; there was one other that I recall, Mr. Richard T. Greene.

Mr. PECORA. Oh, that is a relief. How long had you been connected with the Nicholas Power Co., Inc., in any capacity whatsoever prior to the acquisition of its assets by the International Projector Corporation?

Mr. BURNS. Approximately 10 years.

Mr. PECORA. Now, how long had you been its president prior to the sale of its assets to the International Projector Corporation?

Mr. BURNS. Perhaps a year and a half.

Mr. PECORA. What was that?

Mr. BURNS. Perhaps a year and a half.

Mr. PECORA. Were you ever a stockholder of it?

Mr. BURNS. Yes.

Mr. PECORA. Did you have anything more than the number of shares necessary to qualify you?

Mr. BURNS. Yes.

Mr. PECORA. How many shares did you have?

Mr. BURNS. Fifty shares.

Mr. PECORA. Out of a total outstanding issue of how many?

Mr. BURNS. Oh, 3,200 shares.

Mr. PECORA. When did you first meet Mr. Harley Clarke?

Mr. BURNS. I cannot recall exactly, but somewhere between 1921 and 1923.

Mr. PECORA. That is, sometime prior to the time you became president of the Nicholas Power Co.?

Mr. BURNS. Yes.

Mr. PECORA. As president of the Nicholas Power Co. at the time of the sale of its assets to the International Projection Corporation, did you enter into the negotiations that led to that sale?

Mr. BURNS. No, sir.

Mr. PECORA. Who conducted them in behalf of the Nicholas Power Co.?

Mr. BURNS. Well, it was not a question of negotiations with the company; it was negotiations with the stockholders.

Mr. PECORA. Who conducted the negotiations?

Mr. BURNS. That I do not know either.

Mr. PECORA. You were president of the company that was selling its assets?

Mr. BURNS. Yes.

Mr. PECORA. Don't you know anything about the sale or the negotiations that led to the sale?

Mr. BURNS. Very little, except that there was a desire on the part of a certain number of stockholders who had sufficient stock—who owned sufficient stock—to control the company, to sell it.

Mr. PECORA. Who were those stockholders?

Mr. BURNS. I named them a few minutes ago.

Mr. PECORA. The six that you named?

Mr. BURNS. Yes.

Mr. PECORA. Did they among them own practically all of the outstanding stock?

Mr. BURNS. No, sir; more than sufficient to control the company

Mr. PECORA. Does that mean that they owned more than a majority of the outstanding stock?

Mr. BURNS. Yes.

The CHAIRMAN. What was the business of the Nicholas Power Co.?

Mr. BURNS. The manufacture of motion picture projection machines and accessories.

Mr. PECORA. That was the same business that the International Projector Corporation was engaged in at that time, was it not?

Mr. BURNS. The International Projector Corporation at that time had not been formed.

Mr. PECORA. The International Projector Corporation was formed at the time that the Nicholas Power Co. sold its assets to it, was it not?

Mr. BURNS. Yes.

Mr. PECORA. And who received from the International Projector Corporation the six hundred and ninety thousand odd dollars that the corporation paid for the assets of the Nicholas Power Co.?

Mr. BURNS. A check for that amount was given to me.

Mr. PECORA. Was it made to your order?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you disburse the amount of the check or the sum represented by that check?

Mr. BURNS. I drew several checks—just how many I do not recall—for the exact amount of that check.

Senator COUZENS. To whom?

Mr. BURNS. I do not remember to whom.

Mr. PECORA. You do not remember to whom?

Mr. BURNS. No, sir.

Mr. PECORA. Do you have any records that would refresh your recollection?

Mr. BURNS. No, I have not; but at the suggestion——

Mr. PECORA. What has become of the records?

Mr. BURNS. At the suggestion of your associate, Mr. Silver, I believe, I telephoned the bank in New York for a transcript of the record of that period.

Mr. PECORA. What transcript can the bank give you of the record?

Mr. BURNS. I do not know.

Mr. PECORA. Other than a transcript of the deposit account?

Mr. BURNS. It will also give you the charges against that deposit, will it not?

Senator TOWNSEND. Were those seven checks drawn to the stockholders?

Mr. BURNS. I did not say seven; I said several. I do not know how many there were.

Mr. PECORA. Where are the records of the Nicholas Power Co.?

Mr. BURNS. I do not know.

Mr. PECORA. What happened to them?

Mr. BURNS. I have not the slightest idea what has become of them. It is over 8 years ago.

Mr. PECORA. When did they last pass out of your knowledge as to their whereabouts?

Mr. BURNS. I do not remember having seen them for probably 8 years since the closing of that transaction.

Mr. PECORA. What did the records consist of? Did they consist of a stock certificate book, among other things, or books of account?

Mr. BURNS. Yes.

Mr. PECORA. Do you know what became of them?

Mr. BURNS. No, sir.

Mr. PECORA. Do you know who on behalf of the stockholders of the Nicholas Power Co. negotiated the transaction which resulted in the sale of the assets of that company to the International Projector Corporation for six hundred and ninety-odd thousand dollars?

Mr. BURNS. No, sir; I do not.

Mr. PECORA. You as president of the company knew nothing about it and know nothing about it today?

Mr. BURNS. No, sir.

Mr. PECORA. Other than the fact that a sale was effected?

Mr. BURNS. That is all.

Mr. PECORA. Do you know why the check for six hundred and ninety-odd thousand dollars was made to your order?

Mr. BURNS. No, sir; I have not the slightest idea, except that they had to use somebody, I suppose.

Mr. Pecora. From whom did you get any instructions or guidance of any kind that caused you to receive that check and to disburse the amount that it represented?

Mr. Burns. Well, I was there at the closing, and other officers of the company were there also.

Mr. Pecora. From whom did you get your instructions that prompted you to receive a check for nearly $700,000 that you knew represented the amount paid to your corporation for its assets?

Mr. Burns. I cannot say from whom I received any instructions; I do not recall.

The Chairman. Somebody did not just walk into your office and hand you a check for $690,000?

Mr. Burns. No, sir.

The Chairman. You ought to know something about how it was brought about.

Senator Townsend. Did not your stockholders have certificates showing what they owned in the company?

Mr. Burns. Yes; naturally.

Senator Townsend. Did you have a board of directors?

Mr. Burns. Yes, sir.

Mr. Pecora. Were you on the board of directors?

Mr. Burns. Yes, sir.

Mr. Pecora. Was the matter of the sale of the assets taken up by the board of directors?

Mr. Burns. Yes, sir.

Mr. Pecora. Did you participate in any discussion that affected the consideration of that matter?

Mr. Burns. Yes, sir.

Mr. Pecora. Then what do you recall having learned from any such discussions concerning the sale?

Mr. Burns. Well, I only know that a proposition had been made to purchase the assets.

Mr. Pecora. To whom had the proposition been made?

Mr. Burns. To the board of directors of the company.

Mr. Pecora. By whom?

Mr. Burns. I do not recall by whom.

Mr. Pecora. Were you the active president of the Nicholas Power Co.?

Mr. Burns. Yes, sir.

Mr. Pecora. It was a fairly substantial company, was it not?

Mr. Burns. Yes.

Mr. Pecora. If its assets sold for nearly $700,000 it was not a mere babe in swaddling clothes, was it?

Mr. Burns. No, sir.

Mr. Pecora. Did it have an earning power?

Mr. Burns. Yes.

Mr. Pecora. Of substantially how much?

Mr. Burns. I should say it was earning at that time probably at least 50 percent or over on its capital.

Mr. Pecora. How much was that?

Mr. Burns. $125,000.

Mr. Pecora. Fifty percent a year?

Mr. Burns. Yes; that particular year.

Senator TOWNSEND. On what amount of capital stock?
Mr. BURNS. $350,000.
Mr. PECORA. When the proposition was submitted, by some one whose identity you do not recall, to purchase the entire assets of the company of which you were president, it received, I assume, mature consideration at the hands of the members of the board, including yourself?
Mr. BURNS. Yes.
Mr. PECORA. Who represented the party making that offer?
Mr. BURNS. It may have been Mr. Clarke.
Mr. PECORA. You knew Mr. Harley Clarke before that time did you not?
Mr. BURNS. Yes, sir.
Mr. PECORA. When you say it may have been, is there any doubt in your mind now that it was Mr. Clarke?
Mr. BURNS. Yes and no.
Mr. PECORA. I wish you would tell me which it is. I can't believe it is both yes and no.
Mr. BURNS. It may have been Mr. Clarke.
Mr. PECORA. Can you think of its having been anyone else?
Mr. BURNS. Well, I am inclined to think there was a group interested.
Mr. PECORA. Who was the group?
Mr. BURNS. I do not know who they were.
Mr. PECORA. Did the persons making this offer go behind your back to these stockholders in negotiating for the purchase?
Mr. BURNS. Yes.
Mr. PECORA. Did you resent that?
Mr. BURNS. Well, I did not like it.
Mr. PECORA. Did you go to your friend Harley Clarke and tell him so?
Mr. BURNS. No, sir.
Mr. PECORA. What salary were you receiving then as president of the Nicholas Power Co.?
Mr. BURNS. $10,000.
Mr. PECORA. A year?
Mr. BURNS. Yes, sir.
Mr. PECORA. Did you give your assent as a director to the transaction?
Mr. BURNS. Yes, sir.
Mr. PECORA. What consideration was given to the value of the assets which were sold for six hundred and ninety-odd thousand dollars?
Mr. BURNS. Just what do you mean by "consideration given to the value"?
Mr. PECORA. How did you arrive—how did you, as one of the directors of the company in voting to accept the offer, arrive at the conclusion that that offer was a fair and reasonable offer for the company's assets? That is to say, for your company's assets, the company of which you were the president.
Mr. BURNS. By a competent appraisal.
Mr. PECORA. Do you recall the name of the appraiser?
Mr. BURNS. No, sir.

Mr. Pecora. Was the appraiser one who had been connected with the business of manufacturing and selling projectors in the moving-picture business?

Mr. Burns. I think not.

Mr. Pecora. What kind of an appraiser was he?

Mr. Burns. He was an engineer.

Senator Couzens. What was his name?

Mr. Burns. I do not know his name.

Mr. Pecora. Who called him in to make the appraisal?

Mr. Burns. Those who were interested in purchasing the company.

Mr. Pecora. Did you take the appraisal that was made by the purchasers in determining what would be a fair selling price?

Mr. Burns. No.

Mr. Pecora. What?

Mr. Burns. I did not understand that other question.

(The reporter read the question referred to as above recorded.)

Mr. Burns. No.

Mr. Pecora. I asked you what consideration was given in fixing the selling price to the question of the value of the company's assets, and you said an appraiser was employed.

Mr. Burns. Yes; that is correct.

Mr. Pecora. Now it turns out that the appraiser that was employed was an appraiser employed by the purchaser.

Mr. Burns. No, it was not. I did not understand your question.

Mr. Pecora. Then I did not understand your answer. What is the fact?

Mr. Burns. The company employed the appraiser.

Mr. Pecora. What company?

Mr. Burns. The Nicholas Power Co.

Mr. Pecora. What did you mean when you said before that the appraiser was employed by the purchaser?

Mr. Burns. I told you that I did not understand your question.

Mr. Pecora. What question did you think I asked you when you made that answer?

Mr. Burns. I did not understand your question.

Mr. Pecora. What question did you think I asked you when you made that answer to it?

Mr. Burns. I do not know what question was asked.

Mr. Pecora. Why did you make an answer to a question that you did not understand? You made a pretty definite answer, did you not?

Mr. Burns. Yes.

Mr. Pecora. Why was not the check that was given in payment for those assets made out to the corporation, to the Nicholas Power Co.?

Mr. Burns. I could not tell you.

Mr. Pecora. Who handled the details of the sale in behalf of the Nicholas Power Co.? Did you?

Mr. Burns. No.

Mr. Pecora. Who did?

Senator Couzens. Was it Mr. Harley Clarke?

Mr. Burns. Mr. Clarke was interested in it.

Mr. Pecora. Did he handle the details for the Nicholas Power Co.?

Mr. BURNS. Some of them; yes.

Senator TOWNSEND. Was he a stockholder?

Mr. BURNS. Not to my knowledge; no.

Mr. PECORA. What relationship did he bear to the Nicholas Power Co. that caused you, as president of the company, to permit him to handle the details of the closing for your company?

Mr. BURNS. I believe he was acting for others who controlled or who had the controlling stock interest.

Mr. PECORA. In the Nicholas Power Co.?

Mr. BURNS. Acting for others who had the controlling interest.

Mr. PECORA. Who were those others?

Mr. BURNS. I do not know who they were.

Mr. PECORA. Were they the persons whose names you have given us already as stockholders?

Mr. BURNS. No.

Mr. PECORA. There were others?

Mr. BURNS. There were others, successors to those.

Mr. PECORA, Oh, I see. Then at the time of this sale these stockholders had passed out as stockholders?

Mr. BURNS. Yes.

Mr. PECORA. Who were their successors?

Mr. BURNS. I do not know.

Mr. PECORA. Were they persons whom Mr. Harley Clarke eventually represented at the closing of the sale?

Mr. BURNS. Yes.

Mr. PECORA. Do you not know who they were?

Mr. BURNS. No, sir; I do not.

Mr. PECORA. How long before the sale was consummated did the stockholders, whose names you have given us, sell or part with their stock holdings to the persons that Mr. Clarke represented?

Mr. BURNS. I do not know exactly. It was some time prior to the——

Mr. PECORA. Was it any appreciable length of time prior?

Mr. BURNS. Probably several months.

Mr. PECORA. Were those women whose names you have given us as majority stockholders in the aggregate women who held that stock for their own benefit and right and interest?

Mr. BURNS. Yes.

Mr. PECORA. Do you know how much they got for their stock when they sold to those whom Mr. Clarke represented at the closing?

Mr. BURNS. Will you ask that question again?

Mr. PECORA. The reporter will read it.

(The question referred to was read by the reporter as above recorded.)

Mr. BURNS. I do not know of my own knowledge, but I understood that they had received $150 a share for their stock.

Mr. PECORA. $150 a share; and the total number of shares outstanding was 3,200, did you say?

Mr. BURNS. I think so; yes. I am pretty certain.

Mr. PECORA. And they owned a majority of it, did they?

Mr. BURNS. Yes, sir.

Mr. PECORA. As president of the company did you not sign the certificates that were issued to the new stockholders who bought from these stockholders whose names you have given us?

Mr. BURNS. I do not believe there were any certificates issued to replace those. I do not recall any having been issued.

Mr. PECORA. How did you know that a sale of the stock had taken place in behalf of these stockholders whose names you have given us?

Mr. BURNS. Because I had been informed by Mrs. Richardson to that effect.

Mr. PECORA. Did she inform you simply as to her own stock holdings having been sold?

Mr. BURNS. Yes.

Mr. PECORA. How did you know that Mrs. Stuart's stock was sold?

Mr. BURNS. Because I knew that sufficient stock had been sold to give the purchasers a majority interest.

Mr. PECORA. By "the purchasers" you mean those represented by Mr. Harley Clarke eventually, do you not?

Mr. BURNS. Yes.

Mr. PECORA. So that by the time this sale was effected there had been a change in the identity of the stockholders of your company of a character that made Mr. Harley Clarke the representative of the majority stockholders at the time of the sale; is that right?

Mr. BURNS. I believe so.

Mr. PECORA. Was it Mr. Harley Clarke who gave you whatever instructions you received that enabled you to disburse among the stockholders this six hundred and ninety odd thousand dollars that was paid for the assets of the Nicholas Power Co.?

Mr. BURNS. I won't be certain of it, but it may have been.

Mr. PECORA. Do you recall in what proportions you distributed any of that six hundred and ninety odd thousand dollars?

Mr. BURNS. I have a recollection of having drawn one check for a substantial portion of it to some bank. I think it was the National City Bank.

Mr. PECORA. What was the amount of the check?

Mr. BURNS. Three hundred and some odd thousand dollars.

Mr. PECORA. That is very nearly one half, if not more than one half?

Mr. BURNS. Yes; pretty nearly a half.

Mr. PECORA. Don't you recall the stockholder to whom you made that check payable?

Mr. BURNS. No. I say it was probably drawn to the National City Bank, not to any stockholder. It may have been to take up a loan. I really do not know.

Mr. PECORA. Who had the loan there?

Mr. BURNS. I do not know. I do not know that there was a loan. I am only assuming that there was.

Mr. PECORA. Who gave you the instructions that prompted you to drawn a check for that large amount?

Mr. BURNS. I don't recall who it was. It may have been Mr. Clarke, as I said before.

Mr. PECORA. Do you recall that anyone other than Mr. Clarke was in possession of sufficient facts to enable you to properly disburse the amount received in payment for the assets of your company?

Mr. BURNS. No.

Mr. Pecora. Have you any doubt that it was Mr. Clarke from whom you received your instructions at that time?

Mr. Burns. No. No; I don't think so.

Mr. Pecora. You mean that you have no doubt that it was Mr. Clarke?

Mr. Burns. I am inclined to think that it was he. I am not certain.

Mr. Pecora. In view of the change that had been made in the stockholders, the majority stockholders of your company, had there been a corresponding change made in the board of directors of the company?

Mr. Burns. Yes, sir.

Mr. Pecora. Who were the directors that represented the interests that purchased that stock and who in the transaction were represented by Harley Clarke?

Mr. Burns. You are speaking now of the Nicholas Power Co.?

Mr. Pecora. Yes, sir.

Mr. Burns. I cannot recall a single name of an individual who succeeded any of those—as a matter of fact, we had only five directors, as I recall it.

Mr. Pecora. Who were they?

Mr. Burns. I don't know.

(At this point Mr. Harley Clarke started to take a seat next to Mr. Burns.)

Mr. Pecora. Mr. Clarke, would you kindly sit away from the witness, please?

(The request was complied with.)

Mr. Pecora. Go ahead. Tell us.

Mr. Burns. I don't recall who the new directors were, and I am not certain that new ones were elected, but I think that they were.

Mr. Pecora. You say you are now the president of the International Projector Corporation?

Mr. Burns. Yes.

Mr. Pecora. What salary do you receive?

(The witness calculated on a pad.)

Mr. Pecora. Do you have to stop and figure that out?

Mr. Burns. Yes, sir. [After a pause.] $11,250.

Mr. Pecora. What is that?

Mr. Burns. $11,250.

Mr. Pecora. Do you receive any other form of compensation than salary?

Mr. Burns. No, sir.

Mr. Pecora. Do you know who the board of directors are of your International Projector Corporation today?

Mr. Burns. Yes, sir.

Mr. Pecora. Could you name all of them if I asked you to?

Mr. Burns. I think so. Let's see [writing on pad]: Mr. Harley L. Clarke, and Daniel O. Hastings, P. J. Haller, and S. R. Burns, and there is one other that I am in doubt about.

Senator Couzens. When did they meet last?

Mr. Burns. More than 6 months ago.

Senator Couzens. More than 6 months ago?

Mr. Burns. I think so.

Mr. PECORA. It took you about 2 minutes to think of 4 of the 5 names of the present board?

Mr. BURNS. Yes, sir.

Mr. PECORA. Is your memory usually that slow?

Mr. BURNS. No; no, sir.

Mr. PECORA. Can't you think of the fifth director's name?

Mr. BURNS. Not at the moment; no.

The CHAIRMAN. You are not a director?

Mr. BURNS. Yes, sir; I am a director; I mentioned my name.

Mr. PECORA. When the assets of the Nicholas Power Co. were purchased by the corporation of which you are now the president didn't that corporation take over the books of account and other records of the Nicholas Power Co., including its stock book?

Mr. BURNS. No, sir. It purchased only the physical assets of the company.

Senator TOWNSEND. Did you value the goodwill?

Mr. BURNS. Approximately; yes.

Senator TOWNSEND. What did they appraise the goodwill at?

Mr. BURNS. I don't recall that.

Mr. PECORA. There was some arrangement made for the valuation of the goodwill, was there not?

Mr. BURNS. There probably was.

Mr. PECORA. You don't recall what it was?

Mr. BURNS. No, sir.

Mr. PECORA. Weren't you, as president of the company at that time, interested in seeing that your stockholders got a fair and reasonable purchase price for the assets of the company?

Mr. BURNS. I believe they did.

Mr. PECORA. Well, so far as you had anything to do with the negotiations that led to their getting what you now believe was a fair and reasonable price, you had nothing to do with those negotiations, did you?

Mr. BURNS. Very little.

Senator COUZENS. When were those directors elected whose names you have just called off?

Mr. BURNS. Within the past year.

Senator COUZENS. Within the past year?

Mr. BURNS. Yes.

Mr. PECORA. Do you know whether $150 a share was paid, actually paid, to these women who were the majority stockholders before the sale, some time before the sale of the Nicholas Power Co.'s assets?

Mr. BURNS. No, sir.

Mr. PECORA. How do you know that $150 a share was paid to any of them?

Mr. BURNS. I don't know it.

Mr. PECORA. Why did you tell us that that was the price?

Mr. BURNS. I say I understood that that was the price. I believe that that was the price that had been paid for it.

Mr. PECORA. From what sources did you derive that understanding or information?

Mr. BURNS. From my contact with some of these stockholders.

Mr. PECORA. Several months after these stockholders parted with their holdings for the price of what you think was $150 a share the corporation's entire assets represented by 3,200 shares of stock were

purchased by the International Projector for six hundred ninety thousand and odd dollars?

Mr. BURNS. Yes, sir.

Mr. PECORA. Which is considerably more than $150 per share; is that right?

Mr. BURNS. Yes, sir.

Mr. PECORA. And that price of considerably more than $150 a share, then, went to the persons who were the stockholders of the Nicholas Power Company at the time of the sale?

Mr. BURNS. Yes, sir.

Mr. PECORA. You believe that those were persons represented by Mr. Harley Clarke?

Mr. BURNS. Yes, sir.

Mr. PECORA. You don't know who those persons are?

Mr. BURNS. No, sir.

Mr. PECORA. Did the Nicholas Power Co. have regular meetings of its stockholders when you were its president?

Mr. BURNS. Yes, sir.

Mr. PECORA. Do you know what became of the minute books?

Mr. BURNS. No, sir.

Mr. PECORA. Were they taken over by the International?

Mr. BURNS. No, sir.

Mr. PECORA. How long have you been president of the International?

Mr. BURNS. Year and a half.

Mr. PECORA. Before that had you had any other connection with the International Projector Corporation?

Mr. BURNS. Yes, sir.

Mr. PECORA. Vice president?

Mr. BURNS. Yes, sir.

Mr. PECORA. Isn't it a fact, Mr. Burns, that you originally became connected with the Nicholas Power Co. through the good offices of Mr. Clarke?

Mr. BURNS. No, sir.

Mr. PECORA. Well, through his influence or intervention or suggestion did you go into the Nicholas Power Co. originally?

Mr. BURNS. Through Edward Earl, who was the former president of the Nicholas Power Co.

Mr. PECORA. Were you at one time in the jewelry business?

Mr. BURNS. Yes, sir.

Mr. PECORA. Were you in the jewelry business just prior to the time that you transferred your business to the moving-picture industry?

Mr. BURNS. No, sir.

Mr. PECORA. Well, did you go into some other business in between?

Mr. BURNS. I have been in this business since 1914 or 1915.

Mr. PECORA. In which business?

Mr. BURNS. The moving-picture projector business.

Mr. PECORA. And prior to your becoming connected with the Nicholas Power Co. were you affiliated with Mr. Clarke in any respect whatever?

Mr. BURNS. No, sir; never knew him. I didn't know him then. I didn't know him before my connection with the projector company.

Senator COUZENS. What business were you in just prior to going into the projector business?

Mr. Burns. Brick business.
Senator Couzens. Manufacturing?
Mr. Burns. Brick; yes.
Mr. Pecora. Are the minute books of the Nicholas Power Co. in existence at this time, to your knowledge?
Mr. Burns. I haven't the slightest idea. I don't know where they are.
Mr. Pecora. When did you last see them?
Mr. Burns. Probably 8 years ago.
Mr. Pecora. Prior to this sale to the International?
Mr. Burns. Oh, no. Since the International. Since the formation of the International.
Mr. Pecora. But I mean did you last see those minute books prior to the sale to the International of the assets of the Nicholas Power Co.?
Mr. Burns. Yes, sir; just prior to the sale of the assets to the International.
Mr. Pecora. Have you got here the minute books of the International Projector Corporation?
Mr. Burns. Yes, sir.
Mr. Pecora. Here in Washington?
Mr. Burns. Yes, sir.
Mr. Pecora. Are they in the room now?
Mr. Burns. Yes, sir.
Mr. Pecora. Won't you consult them and see if you can tell us the names of all the members of the board of directors?
Mr. Burns. Yes, sir.
(Thereupon Mr. Burns went to another part of the room and then returned to the witness chair with two minute books.)
Mr. Burns. Now, what is the question?
Mr. Pecora. The names of all the members of the board of directors at the present time of the International Projector Corporation.
Mr. Burns. D. O. Hastings, S. R. Burns, P. J. Haller, A. E. Koegel, and H. L. Clarke.
Mr. Pecora. Now did you know of a corporation called the Precision Machine Co., Incorporated?
Mr. Burns. Yes, sir.
Mr. Pecora. Were you connected with that corporation?
Mr. Burns. Yes, sir.
Mr. Pecora. At the time of the acquisition of the assets of the Nicholas Power Co. by the International do you know that the International Co. also acquired the assets of the Precision Machine Co.?
Mr. Burns. Yes, sir.
Mr. Pecora. Hadn't you ever heard of that Precision Machine Co. prior to that time?
Mr. Burns. Certainly.
Mr. Pecora. Were they a competitor of the Nicholas Power Co.?
Mr. Burns. Yes, sir.
The Chairman. The committee will take a recess until 10 o'clock tomorrow morning.
Mr. Pecora. You will be back, Mr. Burns, at that time.
(Whereupon, at 4:27 o'clock p.m., the subcommittee took a recess until 10 o'clock a.m. of the following day.)

STOCK EXCHANGE PRACTICES

THURSDAY, NOVEMBER 16, 1933

United States Senate,
Subcommittee of the Committee on
Banking and Currency,
Washington, D.C.

The subcommittee met at 10 a.m. pursuant to adjournment on yesterday, in the caucus room of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Joseph B. Lynch, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern; also William Dean Embree and A. Donald MacKinnon, of Milbank, Tweed, Hope & Webb, counsel representing The Chase National Bank and the Chase Corporation; and Martin Conboy, counsel for Albert H. Wiggin.

The Chairman. The subcommittee will come to order. Whom will you have first this morning, Mr. Pecora?

Mr. Pecora. Is Mr. Harley Clarke here?

Mr. Clarke. Yes, sir.

Mr. Pecora. Please come around to the committee table.

TESTIMONY OF HARLEY L. CLARKE, 327 SOUTH LA SALLE STREET, CHICAGO, ILL.—Resumed

Mr. Pecora. Mr. Clarke, did you hear the testimony yesterday that was given by Mr. S. R. Burns?

Mr. Clarke. Yes, sir.

Mr. Pecora. You heard him testify, then, didn't you, that in connection with the transaction whereby the International Projector Corporation acquired the assets of the Nicholas Power Co. in 1925 for a total consideration of six hundred and ninety and odd thousand dollars, you represented certain majority stockholders of the Nicholas Power Co. in the closing of that transaction?

Mr. Clarke. I recall the entire transaction, Mr. Pecora, and would be very glad to state it to you. The stock of the Nicholas Power Co. was acquired over a long period of time, and by "long" I mean several months, and——

Mr. Pecora (interposing). By whom?

Mr. Clarke. By myself and representatives. All the stock having been acquired at various times, it was paid for and put in the name

of my nominees. A meeting was then held and the assets of the corporation were sold to the International Projector Corporation at, as far as I know, the same figure that was paid for the stock, and——

Mr. PECORA (interposing). Now, will you tell me why——

Mr. CLARKE (continuing). The six hundred and ninety and odd thousand dollars, however representing the additional value or the amount that was paid for the equity of the building at nos. 90 and 92 Gold Street. In my testimony of last week I allocated that expenditure to——

Mr. PECORA (interposing). To the Cinema Co., didn't you?

Mr. CLARKE. I allocated that expenditure to the Precision financing, which I believe is an error. I am getting the exact figures for you from New York.

Mr. PECORA. Now, Mr. Clarke, when you testified last week with regard to that transaction, do you recall my having asked you specifically whether you had any interest in the stock of the Nicholas Power Co.——

Mr. CLARKE (interposing). I do, and——

Mr. PECORA (continuing). At the time of the transaction with the International Projector Corporation?

Mr. CLARKE. No. I recall that you asked me if I had any prior interest in the Nicholas Power Co. stock, and I said no. And I did not, but I acquired the stock at that time. I had never been a stockholder before.

Senator COUZENS. When you closed up the deal with the Nicholas Power Co. how many minority stockholders were there outside of what stock you had?

Mr. CLARKE. There were none.

Senator COUZENS. You had acquired it all?

Mr. CLARKE. Yes, sir; it had all been acquired individually.

Senator COUZENS. So the names that Mr. Burns gave us yesterday really meant nothing, because the stock had already been purchased by you and your nominees.

Mr. CLARKE. Yes, sir. Mr. Burns stated, I believe, that there were two sets of stockholders. There really were, but for the time being only in order to sell the assets of the company.

Mr. PECORA. Had you or your nominees purchased any of the stock of the Nicholas Power Co. at any time prior to the transfer of its assets to the International Projector Corporation?

Mr. CLARKE. Oh, yes. The stock had been acquired over a period of months.

Mr. PECORA. Over a period of months prior to the sale?

Mr. CLARKE. That is right.

Mr. PECORA. Let me remind you of the testimony which you gave on that subject last week. I am reading from pages 2042 and 2043 of the stenographic transcript. No, I will start at page 2041, and I will read it in question-and-answer form, although the questions were propounded by me and the answers made by you:

Q. Was any sum of money paid by the International Projector Corporation to the Nicholas Power Co., Inc.?—A. Yes, sir.

Q. How much and for what?—A. $690,777.78.

Q. What was that paid for?—A. It was paid to Mr. S. R. Burns, who acted as agent for certain of the stockholders controlling the company for the assets of it, the Nicholas Power Co.

I am not reading all of the testimony, but just those portions that I want to recall to your mind now:

Q. What was the business of the Nicholas Power Co., Inc.?—A. Manufacturer of motion-picture machines.

And then further on down on page 2042:

Q. Now, the six hundred ninety thousand and odd dollars that were paid for the assets of the Nicholas Power Co., (Inc.), you said were paid to a man named S. R. Burns.—A. That is correct.
Q. Who represented the stockholders of the Nicholas Power Co.?
A. Yes, sir.
Q. Was there a large number of such stockholders?
A. I don't recall. A small number, 12 or 15.
Q. Were you the principal stockholder?
A. I was not.
Q. Were you one of them?
A. No; I was not.
Q. Did you have any interest whatever in the Nicholas Power Co. at the time its assets were purchased for the International for 690,000-odd dollars?

And your answer to that question propounded by me, was:

No stock interest. I had made the company a small loan at one time. I don't recall whether it had been paid at that time or not.

Now, Mr. Clarke, was that testimony so given by you correct?

Mr. Clarke. Why, yes, indeed; to my way of thinking it is absolutely correct.

Mr. Pecora. Don't you see——

Mr. Clarke (continuing). I understood you, Mr. Pecora, to mean—and I have already told you that the assets had been acquired through Mr. Burns, that he was the agent acting in the matter. I understood you quite distinctly to mean had I an interest in this stock, had I owned any of this stock before, was I a stockholder of the Nicholas Power Co. I was, of course, when the thing was acquired.

Mr. Pecora. Well, Mr. Clarke, I quite specifically asked you this question, as shown on page 2043 of the stenographic transcript:

Did you have any interest whatever in the Nicholas Power Co. at the time its assets were purchased by the International for 690,000-odd dollars.

Mr. Clarke. Yes; I had all the stock, and——

Mr. Pecora (interposing). You had what?

Mr. Clarke. We had all of the stock.

Mr. Pecora. And then did you make this answer to that question, as then propounded by me:

No stock interest. I had made the company a small loan at one time. I don't recall whether it had been paid at that time or not.

And then Senator Couzens asked you this question:

Not being a stockholder, why would you make them a loan?

And your answer was:

Because they needed the money and I was anxious to accommodate them, because they were anxious to sell and it took a long time to get the corporation in shape so they could sell.

Mr. Clarke. That is right.

Mr. Pecora. So you left, very definitely, the impression that you were not a stockholder, and that you had no interest in the Nicholas

Power Co. at the time when those assets were purchased by the International Projector Corporation, did you not?

Mr. CLARKE. Well, I am sorry if I left any impression that should not have been left. But I distinctly understood from your line of questioning: Did I have a prior interest? That is what I thought was the intent of your questions.

Mr. PECORA. How in the world could you have derived such an understanding of my question when I specifically asked you if you had any interest whatever at the time when those assets were acquired for six hundred ninety thousand and odd dollars?

Mr. CLARKE. Well, you understand it now, don't you?

Mr. PECORA. I have understood it all along, Mr. Clarke, but apparently you did not, or you did not want us to understand the facts.

Mr. CLARKE. Well, I was very glad to have you understand them.

Mr. PECORA. Why did you make that answer, then?

Mr. CLARKE. I am telling you now.

Mr. PECORA. I still fail to see the reason, when my question was very simple in its terms, and very specifically asked as to the time of the sale to the International Projector Corporation.

Mr. CLARKE. Well, I had not been a stockholder of the Nicholas Power Co. up to the time when I began to acquire its stock for the purchaser.

Mr. PECORA. How long did it take you to acquire the stock prior to the sale of the Nicholas Power Co.'s assets to the International Projector Corporation?

Mr. CLARKE. Well, the negotiations had been going on for a couple of years, but as to actually getting any stock, from the time the first stock was purchased to the end was over a period of a few months, and I don't know exactly how many.

Mr. PECORA. All right. How much did you pay for that stock that you so acquired?

Mr. CLARKE. I think the average price was a little over $150 a share.

Mr. PECORA. For how many shares?

Mr. CLARKE. But I shall get the exact amount for you.

Mr. PECORA. How many shares did you buy?

Mr. CLARKE. Three thousand two hundred shares.

Mr. PECORA. Then you bought the entire outstanding stock, did you?

Mr. CLARKE. That is right.

Mr. PECORA. How long before the sale of the assets of the Nicholas Power Co. to the International Projector Corporation did you complete those purchases of all the outstanding stock?

Mr. CLARKE. Well, it was a comparatively short time. A few weeks I think elapsed.

Mr. PECORA. And when that sale was effected for six hundred and ninety thousand and odd dollars, what price per share did that represent for all the capital stock of the Nicholas Power Co.?

Mr. CLARKE. Well, say, $690,000 would represent—and as I told you, I was in error in saying that that was in the Precision deal, in the acquisition of the Cinema stock. It was in this deal.

Mr. PECORA. Just please answer my question, will you?

Mr. CLARKE. I am answering it, am I not?

Senator COUZENS. No; you are not answering it. All you would have to do would be to divide 3,200 shares into six hundred and ninety thousand and odd dollars.

Mr. CLARKE. It paid for something else, too. It paid for the equity in the building.

Mr. PECORA. What building?

Mr. CLARKE. Nos. 90 and 92 Gold Street.

Mr. PECORA. When was that purchase effected?

Mr. CLARKE. Well, it was not completed even at that time. The money was simply put up, and it took some time to complete it.

Mr. PECORA. Why should the cost of the acquisition of the Gold Street property in New York have been included in the check that was drawn for six hundred and ninety thousand and odd dollars which represented the purchase price of the assets of the Nicholas Power Co.?

Mr. CLARKE. I don't know, but——

Mr. PECORA (interposing). Well, if you don't know, who in the world does know why it was done in that way?

Mr. CLARKE. Well, I assume I could find out why it was done that way. But I do not know at the moment why it was done that way.

Mr. PECORA. You have testified very clearly and explicitly heretofore, and your testimony has been checked up, to the effect that the price paid by the International Projector Corporation for the assets of the Nicholas Power Co. was $690,777.78. You are now telling us——

Mr. CLARKE (interposing). That is correct. And I have corrected my testimony to say that I was in error, that the price for the equity of that building wasn't included in the Precision deal but rather in the Nicholas Power Co. deal. And I got that information last night.

Mr. PECORA. Did the Nicholas Power Co. have any interest in that Gold Street property?

Mr. CLARKE. Well, they had had a lease on the property for many many years, so it was rather natural to include it along with their deal, I suppose.

Mr. PECORA. Where was the office or place of business of the Nicholas Power Co. at the time?

Mr. CLARKE. At 90 and 92 Gold Street.

Mr. PECORA. Is that the property you have referred to as having been purchased?

Mr. CLARKE. Yes, sir.

Mr. PECORA. What interest did it have in the property? Was it a leasehold interest?

Mr. CLARKE. Not a leasehold interest, but just a lease on the property.

Mr. PECORA. A lease of the entire property?

Mr. CLARKE. No; it did not occupy all of the floors.

Mr. PECORA. What interest did it have in that property?

Mr. CLARKE. It leased it.

Mr. PECORA. Leased all or what portion of it?

Mr. CLARKE. They simply had five floors.

Mr. PECORA. What was the annual rental mentioned in that lease?

Mr. CLARKE. I wouldn't know without looking it up.

Mr. PECORA. What was the unexpired term of the lease at the time you bought the assets of the Nicholas Power Co.?

Mr. CLARKE. I couldn't tell you that without looking it up.

Mr. PECORA. Has that lease since expired?

Mr. CLARKE. Well, obviously, when the company bought the properties they were a part of the company and they did not need a lease. The lease, of course, then expired.

Mr. PECORA. Who owned the property at that time on which the Nicholas Power Co. had this lease?

Mr. CLARKE. Well, I think, as I testified before, that it was owned by the Healy estate. That is, the fee was; but I don't know the details of that. It is easy to get them.

Mr. PECORA. Well, now——

The CHAIRMAN (interposing). What was the amount of the loan to the Nicholas Power Co. made by you, do you remember?

Mr. CLARKE. Well, it was less than $50,000. It was $50,000 or less, and I don't recall. It was paid back.

The CHAIRMAN. It was paid back immediately before you acquired their property?

Mr. CLARKE. It had been paid back before I acquired it.

The CHAIRMAN. You bought Burns' stock, did you?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. How long before the transaction you have referred to had Burns sold out his stock, do you remember?

Mr. CLARKE. I really don't recall, Senator. I think he had 50 shares of stock.

Senator TOWNSEND. Burns was acting as your agent, wasn't he?

Mr. CLARKE. That is right.

The CHAIRMAN. You paid him $150 a share?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. All right.

Mr. CLARKE. Mr. Pecora, I have just had handed to me a photostatic copy of what I am told you have, which distinctly brings out how this transaction was handled and that the $690,777.78 was——

Mr. PECORA (interposing). What does it bring out?

Mr. CLARKE. It brings out that this included the purchase of the equity of the building.

Mr. PECORA. Where do you see that?

Mr. CLARKE. I will read it to you if you want me to.

Mr. PECORA. Let me show you what purports to be a photostatic reproduction of a certain tabulation of figures and a statement of transactions that those figures relate to. Will you look at it and tell me if that was prepared by you?

Mr. CLARKE. Yes; that was prepared by us.

Mr. PECORA. That was prepared by you?

Mr. CLARKE. But we do not have those records.

Mr. PECORA. Who prepared that?

Mr. CLARKE. Mr. Keller, the auditor who sat here with me the other day, and myself.

Mr. PECORA. Well, now, this was prepared for the purpose of informing us of certain business transactions which the International

Projector Corporation had, among other things, with the Nicholas Power Co., Acme Motion Picture Projector Co., and the Precision Machine Co., Inc., was it not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And you gave it to us as a correct statement, didn't you?

Mr. CLARKE. Certainly. I was trying to give you correct information as to all these transactions.

Mr. PECORA. Now, let me read to you from this statement that you gave us as correct information, and referring to what disposition was made of the proceeds amounting to $2,250,000, which the International Projector Corporation realized from the sale of its securities at the time of its creation. The statement says:

Proceeds $2,250,000 used as follows:

Acme Motion Picture Projector Co.: Purchase of Acme Motion Picture Projector Co. bonds, $171,831.67. Payment of liabilities of Acme Motion Picture Projector Co., $197,000. Nicholas Power Co., Inc.: Paid to S. R. Burns, acting as agent, for assets of Nicholas Power Co., $690,777.78. Precision Machine Co., Inc.: Purchase of assets from stockholders, of Precision Machine Co., James A. Stillman, $200,000, Adrian H. Larkin, $200,000. H. L. Clarke for Precision stock acquired by him. $200,000. Paid to H. L. Clarke expended by him for property of Cinema Building Corporation, $225,700.65.

Now, to what did this item of $225,700.65 relate?

Mr. CLARKE. It should have been included in the six ninety—not in a duplicate item.

Mr. PECORA. How can you say it is a duplicate item when the total of all those items, which specifically includes six hundred and ninety thousand and odd dollars and the two hundred and twenty-five thousand and odd dollars, exactly makes $2,250,000?

Mr. CLARKE. Mr. Pecora, this is not an audited statement and was got up at the request of your own people to help you out in this investigation, and I did the best I could with the information available. I am now going to the records to get the exact information, and you shall have it.

Mr. PECORA. If this $225,700.65, which is separately itemized here as an item of disbursement of that two and a quarter million dollars——

Mr. CLARKE (interposing). Well, it was a part of——

Mr. PECORA. Wait a minute—is included in $690,000, then that total of $2,250,000 is shy $225,700, is it not?

Mr. CLARKE. That is correct. If the company had three hundred and some thousand dollars' worth of cash when it started business, I have no doubt that it would tally out exactly, because the auditors checked it up at the time.

Mr. PECORA. I would like to find out when the exact tally is going to be made and given to us. I thought it was going to be given to us when you furnished us with this statement.

Mr. CLARKE. I thought this was correct, too. From my information it worked out about the figure. As as matter of fact, two million two hundred and fifty is not the correct figure. Two million two hundred and eighty-two is the correct figure, because the interest was added in.

Mr. PECORA. Who prepared this statement that you gave us?

Mr. CLARKE. This statement was prepared by Mr. Keller and myself from the books of the Webster Securities Corporation that owned the stock of the General Theatres, and our entries are not in detail, because they naturally would not be. We are not keeping the books of the company, and we did not go to the books of the company to try to find out anything.

Mr. PECORA. I hope you did not prepare this very voluminous detailed statement from memory.

Mr. CLARKE. Oh, we did not. I told you we prepared it from the books of the Webster Securities Corporation.

Mr. PECORA. Were not those books correctly posted?

Mr. CLARKE. Yes. This amount is correct that you have given here for the Cinema Building stock. It is correct. It is put in the wrong place, that is all.

Mr. PECORA. Then it should not have been put here at all if it is included in the item of $690,000?

Mr. CLARKE. No; the six hundred and ninety should have been detailed with that out.

Mr. PECORA. Then where do you get the balance to make up the two and a quarter million dollars total?

Mr. CLARKE. At the moment I cannot tell you, but I say I am going to give it to you.

Mr. PECORA. When?

Mr. CLARKE. As soon as I can get it.

Mr. PECORA. What do you think that means?

Mr. CLARKE. I think within a day or so. It was too late to get anyone on the phone last night, but I did this morning.

Mr. PECORA. Now, Mr. Clarke, I want you to tell me something more about this lease to which a value of $225,000 was ascribed. Tell me all you know about it.

Mr. CLARKE. Are you referring to what was paid for the equity of the property?

Mr. PECORA. I am referring to this item of $225,700.65 which you now say was included in the total of $690,770 that was paid by the International for the acquisition of all of the assets of the Nicholas Power Co. Tell me all you recall about that lease.

Mr. CLARKE. Well, I told you I don't know what the rent amounted to that was paid by the Nicholas Power Co. This was not a lease. This was the acquisition——

Mr. PECORA (interposing). Haven't you been calling it a lease all along right up to the last few moments?

Mr. CLARKE. No; I don't think so.

Mr. PECORA. How did you refer to it before?

Mr. CLARKE. I referred to it as an equity in the property.

Mr. PECORA. Didn't you refer to it as a lease?

Mr. CLARKE. Why, yes. You spoke about the Nicholas Power Co., the people that occupied this property at 90 and 92 Gold Street—I informed you that they did occupy it a while, occupied it for many years, that I thought they occupied about five floors.

Mr. PECORA. Under a lease?

Mr. CLARKE. Under a lease.

Mr. PECORA. Was this item of $225,700 paid for the Nicholas Power Co.'s equity or rights under that lease?

Mr. CLARKE. No; it had nothing to do with their lease whatever. It was for the property—the property. They were in this property as a tenant. Nothing to do with it.

Mr. PECORA. The only rights they had in the property were the rights given to it by the lease?

Mr. CLARKE. Yes; they leased the property; they rented it.

Mr. PECORA. What did this $225,700 represent then?

Mr. CLARKE. It represented the amount paid for the equity in the property at 90 and 92 Gold Street.

Mr. PECORA. What did that equity consist of?

Mr. CLARKE. Well, it was the ownership of the building, the ground and the building.

Mr. PECORA. Did the Nicholas Power Co. own the building?

Mr. CLARKE. No, sir; they leased four or five floors. Possibly it was six.

Mr. PECORA. I asked you what that equity of the Nicholas Power Co. in that property consisted of and you said the ownership of the building, the ground. Is that correct?

Mr. CLARKE. I don't so recall any answer, Mr. Pecora.

Senator COUZENS. I understood the witness to say that that was for the equity paid to the Healy estate, but I now fail to understand why it was included in this sum of $690,000 to the Nicholas Power Co. I wish Mr. Clarke would explain that.

Mr. CLARKE. Senator, Mr. Pecora has asked me to explain it. It could be set out as a separate item just as well as not, because it was separate.

Senator COUZENS. Why was it paid to the Nicholas Power Co.?

Mr. CLARKE. It was not. It was paid to Mr. Burns.

Mr. PECORA. That is the first time you have said that, isn't it?

Senator COUZENS. Yes.

Mr. CLARKE. No; I have told you the whole $690,000 was paid to Mr. Burns and Mr. Burns disbursed it.

Mr. PECORA. Did Mr. Burns own the Nicholas Power Co.?

Mr. CLARKE. No.

Mr. PECORA. Who owned the Nicholas Power Co. at the time of the sale of its assets?

Senator COUZENS. Mr. Clarke has testified that he did.

Mr. PECORA. Is that right?

Mr. CLARKE. That is correct.

Mr. PECORA. You owned it?

Mr. CLARKE. Yes.

Mr. PECORA. Why was it paid to Mr. Burns then?

Mr. CLARKE. Because we had to have a disbursing agent and somebody to take charge of selling the assets of the company to the International.

Mr. PECORA. Who were the stockholders at that time, your nominees?

Mr. CLARKE. That is right.

Mr. PECORA. Who were they?

Mr. CLARKE. Well, Mr. Burns was a nominee, Mr. Squire was a nominee, and Mr. W. E. Green was a nominee, and some people in the office. It was purely the mechanical means of the sale of the assets of the property.

Mr. PECORA. Did you say "purely the mechanical means"?

Mr. CLARKE. That is right.

Senator COUZENS. I am afraid it was not very pure.

Mr. CLARKE. Well, we did not think we paid too much for the property at the time, Senator, and we turned it over at the same price we acquired it.

Senator COUZENS. I am still unable to understand why you should pay through Mr. Burns the equity the Healy estate had in the Gold Street property, and you have not explained that to us.

Mr. CLARKE. My only explanation for it at the moment is that that was the building occupied by this company that was bought, namely, the Nicholas Power Co. They had been there for years, and we decided that we would use that factory building to manufacture the Precision machine. The Precision Machine Co. was located on Thirty-fourth Street. So it was a natural thing to do to allocate that in the cost of the acquisition of the Nicholas Power Co., although it had absolutely nothing to do with the stockholders.

Senator COUZENS. I am still too dumb to understand.

Mr. CLARKE. Well, there was a certain amount paid to the stockholders, Senator, for the stock.

Mr. PECORA. I don't think I am too dumb to understand it, but I am too dumb to understand why this witness is testifying the way he is about this and why he testified last week in the way he did about it.

Senator COUZENS. I assume that the witness understands that he is under oath and if he swears to a falsehood he can be charged with contempt.

Mr. PECORA. With perjury.

Senator COUZENS. That would be in contempt of the Senate, though.

Mr. CLARKE. Well, Senator, I assume that it is permissible to make an error, is it not? I corrected it as soon as I found out.

Mr. PECORA. It is not permissible to make errors; but when errors are honestly made, of course it is permissible to correct them.

Mr. CLARKE. Yes, sir. That was honestly made.

Mr. PECORA. But I don't know how you could have made any error when I asked you last week specifically if you had any stock interest in the Nicholas Power Co. at the time it sold its assets to the International and you said, "None whatever, no stock interest"; that the only interest you had was that you at one time had made the Nicholas Power Co. a small loan, which you were not sure had been paid at the time of this sale. Now that was the definite answer you made to the very specific question that was designed to ascertain from you what stock interest, if any, you had in the Nicholas Power Co. at the time of its sale to the International.

Now, I still do not understand why you then did not inform the committee that you practically were the sole stockholder of the Nicholas Power Co. at that very time.

Mr. CLARKE. Mr. Pecora, wasn't one of my answers last week to this effect, that I was not a stockholder of the Nicholas Power Co. prior to my acquisition of the stock and the sale of its assets?

Mr. PECORA. How in the world could you have been a stockholder prior to the acquisition of stock?

Mr. CLARKE. I could have been one of the stockholders.

Mr. PECORA. I did not ask you anything about that.

Mr. CLARKE. But I was not.

Mr. PECORA. I asked you if you had any stock interest whatsoever.

Mr. CLARKE. That is right.

Mr. PECORA. In the Nicholas Power Co. at the specific time that it sold its assets to the International, and you said, "No stock interest. I had made the company a small loan at one time, and I don't recall whether it had been paid at that time or not."

And furthermore, Mr. Clarke, you said immediately prior to that question and answer—you gave this testimony—I asked you, "Were you the principal stockholder?" And your answer was, "I was not." Then I asked you, "Were you one of them?" And your answer was, "No; I was not."

Mr. CLARKE. Well, you see, Mr. Pecora, I may be in error. I understood the intent of your question was "Were you a stockholder fo the Nicholas Power Co., and acquiring most of the stock from the stockholders?" That was what I thought was the intent of the question, so that I said to you that I was not a stockholder, meaning that I had not been a stockholder of the Nicholas Power Co. prior to the time of trying to acquire the assets.

Senator COUZENS. I do not think we need to spend any more time on that, Mr. Pecora. We understand it.

Mr. PECORA. Now, you as the sole stockholder, through your nominees of the Nicholas Power Co. at the time it sold its assets to the International, must have received all of this purchase price of six hundred and ninety thousand and odd dollars; is that correct?

Mr. CLARKE. Through my nominees?

Mr. PECORA. Yes.

Mr. CLARKE. That is correct.

Mr. PECORA. It ultimately went to you, every penny of it, didn't it?

Mr. CLARKE. No; every penny of it didn't go to me.

Mr. PECORA. How much of it went to anybody else?

Mr. CLARKE. It went to pay for this stock which had been acquired in various ways, on loans, and loans had been made against the stock by the owners of it prior to that time.

Mr. PECORA. Had you paid for the stock before you received the purchase price from the International?

Mr. CLARKE. No.

Mr. PECORA. What did you do—tie the stock up before the International paid for it?

Mr. CLARKE. Well——

Mr. PECORA. How did you acquire it?

Mr. CLARKE. It was not all done in the same way, you see. It was acquired from these individual stockholders.

Mr. PECORA. It was acquired from individual stockholders by you through agents or nominees of yours?

Mr. CLARKE. That is correct.

Mr. PECORA. Did you pay a single penny for any of the stock that you so acquired before you received or before the International company paid over this 690 thousand and odd dollars.

Mr. CLARKE. Oh, yes.

Mr. PECORA. How much did you pay out for acquisition of stock?
Mr. CLARKE. I don't recall.
Mr. PECORA. About how much?
Mr. CLARKE. Oh, I should imagine a couple hundred thousand dollars.
Mr. PECORA. Do you recall to whom you paid that?
Mr. CLARKE. Yes; some of the money was put up for the Bell stock. Some of it was put up for the Richardson stock, and several smaller ones. I am trying to get you the detail as I knew it.
Mr. PECORA. How much, all told, do you recall you paid for all of that stock of the Nicholas Power Co. when you bought it from its——
Mr. CLARKE (interposing). Approximately a half million dollars.
Mr. PECORA. Well, now, you said you paid around $150 a share for it a few minutes ago?
Mr. CLARKE. Well, there was 3,200 shares.
Mr. PECORA. All right.
Mr. CLARKE. At 150 would be what. $480,000, wouldn't it?
Mr. PECORA. Yes.
Mr. CLARKE. That is around a half a million.
Mr. PECORA. And then you got from the International $690,000?
Mr. CLARKE. That is correct—not for that stock.
Mr. PECORA. Well then, you got it for what the stock represented?
Mr. CLARKE. No, sir.
Mr. PECORA. The assets of the company—didn't you?
Mr. CLARKE. No, I did not.
Mr. PECORA. What did you get it for then?
Mr. CLARKE. I testified to you that the 200-odd thousand that was paid out for the equity in the building at 90 and 92 Gold Street was included in this amount of money.
Mr. PECORA. Who received that 200-odd thousand dollars?
Mr. CLARKE. I did, and I gave my check for the amount to the estate for the property.
Mr. PECORA. To whom?
Mr. CLARKE. The Healys. I have the canceled check, but I haven't it with me.
Mr. PECORA. What did the International do, buy the property at that time?
Mr. CLARKE. The property was bought, yes; but I don't think the title was cleared for some time, but the money was put up.
Mr. PECORA. It was bought by the International?
Mr. CLARKE. That is correct.
Mr. PECORA. Some time after the International bought the assets of the Nicholas Power Co.?
Mr. CLARKE. I am not trying to withhold it from you, Mr. Pecora, but the money was put up and the actual sale or transaction did not take place until later, because there had to be a title quieted or something of that sort.
Mr. PECORA. But at the time——
Mr. CLARKE (interposing). At the time it was bought under contract, yes; and the money put up.
Mr. PECORA. Now, please don't answer my question till I finish. At the time of the sale of the assets of the power company to the

International the power company did not have the title to that property on Gold Street, did it?

Mr. CLARKE. No, sir; it never had it.

Mr. PECORA. It was merely tendered under lease?

Mr. CLARKE. That is right. It never had it.

Mr. PECORA. Never had it. The title to that property was acquired eventually by the International Projector Corporation, was it?

Mr. CLARKE. That is correct.

Mr. PECORA. But it did not so acquire that title until sometime after the International had purchased the assets of the Nicholas Power Co. for $690,000?

Mr. CLARKE. Yes, but it put up the money at the time, at the time or prior, put up the money for the equity.

Mr. PECORA. It put up the money it paid eventually for the purchase of the Gold Street property?

Mr. CLARKE. That is right.

Mr. PECORA. The International bought the fee of that property, didn't it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You know what that means, don't you?

Mr. CLARKE. The fee?

Mr. PECORA. Yes.

Mr. CLARKE. Yes; I know what a fee is.

Mr. PECORA. I mean the fee of real estate.

Mr. CLARKE. Yes; I know what it means.

Mr. PECORA. Fee title to real property?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Are you a lawyer?

Mr. CLARKE. No, sir.

Mr. PECORA. That is what I meant.

Mr. CLARKE. I know the difference between a leasehold and a fee.

Mr. PECORA. Yes; all right.

Mr. CLARKE. The exhibit that I had here, Mr. Pecora, on your records, is 301-7, they tell me.

Mr. PECORA. I have that.

The CHAIRMAN. Do I understand the situation was that the title to this Gold Street property was held by some estate and there was a mortgage on the property?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. And you estimated the equity of the estate, that is, the value of the property over and above the amount of the mortgage, was 200 and some-odd thousand dollars?

Mr. CLARKE. That is correct. That is what we bought it for.

The CHAIRMAN. And you bought the property itself subject to this mortgage?

Mr. CLARKE. That is right. There were two or three parcels in the property.

The CHAIRMAN. That is what you call the equity?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, will you be good enough to tell the committee why the International Projector Corporation, before it had acquired title to that Gold Street property, for which title it eventually paid

245,000-odd dollars, paid in advance of such acquisition the full purchase price?

Mr. CLARKE. I don't think the money was actually turned over, Mr. Pecora. I think it was just put up.

Mr. PECORA. Put up with whom?

Mr. CLARKE. With a bank, whoever it was. I don't know, but I am going to find out.

Mr. PECORA. When you find out, also find this out for the benefit of the committee, unless you can tell us now: Why did the Nicholas Power Co. receive in the purchase price that was paid to it for its assets the sum of money which the International Co. eventually had to pay or did pay for the purchase of the fee simple of that Gold Street property?

Mr. CLARKE. Well, I don't know, but I imagine it may have been contemplated at the time to let the Nicholas Power Co. own the building. It never did, but I say it may have been contemplated at the time, because they were occupying a greater part of it.

Mr. PECORA. I don't want any speculation about it, Mr. Clarke.

Mr. CLARKE. Well, I know, but you asked me to tell you, and I say that is a possibility. I don't know.

Mr. PECORA. At the time of this transaction between—I want you to get the exact facts about that. Will you?

Mr. CLARKE. As near as I can; yes, sir.

Mr. PECORA. Do you doubt your ability to get the exact facts?

Mr. CLARKE. Well, if you don't mind my saying so, Mr. Pecora——

Mr. PECORA. I don't mind anything you say. You take all the risk of anything you say. I don't.

Mr. CLARKE. I am only trying to be helpful, only trying to explain the matter.

Mr. PECORA. I am still waiting.

Mr. CLARKE. So much money was paid out for the stock of the company. So much money was paid out for the equity in this building. If it was included in one check and handled that way, I may not be able to find the reason why, and if I cannot find it I cannot give it to you, but if I can find I shall give it to you.

Mr. PECORA. What position did you occupy in the International Projector Corporation at the time it purchased the Nicholas Power Co.'s assets?

Mr. CLARKE. What position did I occupy in the International?

Mr. PECORA. Or what relation did you have toward it?

Mr. CLARKE. I controlled it.

Mr. PECORA. How?

Mr. CLARKE. I controlled it, was president of it.

Mr. PECORA. And you also controlled the Nicholas Power Co. at the same time as the sole stockholder thereof?

Mr. CLARKE. Yes; I had acquired it in the interest of the International Projector Corporation.

Mr. PECORA. So that you, as the owner and president—by owner I mean the man who controlled its business and its operations—is that what you mean by it?

Mr. CLARKE. Yes.

Mr. PECORA. All right. Then you as the man who controlled the International Projector Corporation sat down and did business with

yourself as the man who owned the Nicholas Power Co., did you not?

Mr. CLARKE. I should not state it that way if I were to state it.

Mr. PECORA. You probably would not want to state it that way, but is it not the fact?

Mr. CLARKE. I should state it this way—no; if I may answer the question. As the president of the International Projector Corporation we sought ownership in the Nicholas Power Co.

Mr. PECORA. Please add the other element, "as the president of the International and the man who controlled it." That was what you said.

Mr. CLARKE. And as the man who controlled it—we sought to acquire the assets of the Nicholas Power Co., and we set about to do it.

Mr. PECORA. And those assets were owned by you then?

Mr. CLARKE. And in the process of so doing I became the owner of the assets.

Mr. PECORA. Of the Nicholas Power Co.?

Mr. CLARKE. Or the stock—and I became the owner of the stock, and then the assets were transferred to the International Projector Corporation.

Mr. PECORA. Were those assets transferred to the International for exactly the price that you had paid for them?

Mr. CLARKE. As far as I know. There was no profit made out of it by anyone that I know of.

Mr. PECORA. How did you pay for the stock of the Nicholas Power Co., by your checks?

Mr. CLARKE. I did; and then loans were made, as I have testified.

Mr. PECORA. To whom?

Mr. CLARKE. To myself, I believe, or to my agents, on the stock as we were getting it together.

Mr. PECORA. Who made you those loans?

Mr. CLARKE. I have already testified that I am trying to get the details of the whole transaction, which I will give you.

Mr. PECORA. Can't you recall now where you got the loans?

Mr. CLARKE. I know there was a loan of the New York Trust Co. and I know there was a loan of the National City Bank. The details I cannot give you.

Mr. PECORA. Now, was the loan that you had received from the New York Trust Co. a loan of $300,000?

Mr. CLARKE. No, sir; that does not refer to this.

Mr. PECORA. What does that $300,000 loan of the New York Trust Co. refer to?

Mr. CLARKE. Mr. Pecora, when I give you this information I will give it to you exactly and in detail. I will testify at the moment that I have been informed that that was a loan of the Precision Machine Co., but I tell you at the same time that I don't know it.

Mr. PECORA. Do you recall the testimony you gave last week before this committee regarding your having owned 600,000 shares of the common stock of the International Projector Corporation?

Mr. CLARKE. Yes.

Mr. PECORA. Did you own those 600,000 shares at the time the General Theatres Equipment Co. took over the International on a stock-exchange basis?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Do you still own the stock that you took over in exchange for those 600,000 shares?

Mr. CLARKE. Of General Theatres? Yes, sir; unfortunately.

Mr. PECORA. Before I proceed to what I am going to eventually ask you I want to recall to your mind the following testimony you gave before the committee last week with regard to those 600,000 shares, or rather with regard to the stock of the General Theatres Equipment Co. which you received in exchange for those 600,000 shares, and I am referring now to this testimony as it appears at page 2136 of the stenographer's transcript:

> QUESTION. You had something like 600,000 shares of this common stock at that time, of the International Projector?
>
> Mr. CLARKE. Yes, sir; and still have it; that is, the exchange stock.
>
> Question by Senator COUZENS. You never sold any of it on the market at all?
>
> Mr. CLARKE. No, sir. Now, that is not quite true. I sold a few shares, but all the money I got through it I put back into the company. It was a very nominal amount.

Is that testimony true, Mr. Clarke?

Mr. CLARKE. I believe it is.

Mr. PECORA. How?

Mr. CLARKE. I believe it is.

Mr. PECORA. All right. Did you have a transaction involving a sale of any of that stock some time in 1929 with Pynchon & Co., the Shermar Corporation, West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., Inc.?

Mr. CLARKE. You are referring to General Theatres stock?

Mr. PECORA. Yes.

Mr. CLARKE. Mr. Pecora, if you have the letter and exhibit there it would refresh my mind. I cannot locate what you want. I probably would know about it.

Mr. PECORA. In order to enable you to answer that question would you have to have your recollection refreshed?

Mr. CLARKE. Yes, because you are tying a sale of that stock to my own stock. Is that correct?

Mr. PECORA. Yes.

Mr. CLARKE. Then I would.

Mr. PECORA. Then you would have to have it refreshed?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You would have to have something to refresh your recollection as to whether or not you sold or had any business transaction involving the selling by you of your stock to the parties whose names I have mentioned, to any of them?

Mr. CLARKE. Yes, I would.

Mr. PECORA. All right. If you don't recall your own stock transactions I will try to refresh your recollection. Will you be good enough to look at what purports to be a photostatic copy or reproduction of a letter addressed by you under date of July 9, 1929, to Pynchon & Co., the Shermar Corporation, West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., Inc. [handing document to

Mr. Clarke]? After looking at that photostatic copy tell me if you recognize it to be a true and correct copy of a letter sent by you.

(Mr. Clarke perused the document.)

Mr. PECORA. Mr. Clarke, does it take you that long to be able to identify that?

Mr. CLARKE. Yes; it takes me this long to read it. It is signed by an attorney, not by myself.

Mr. PECORA. For your possible benefit let me say that that photostatic reproduction was furnished to us by the Shermar Corporation. And I might further state for your possible guidance that the original of that letter is in the files of the Shermar Corporation and was seen by us.

(Mr. Clarke handed the document to Mr. Pecora.)

Mr. PECORA. Now, what is the answer, Mr. Clarke?

Mr. CLARKE. Well, that purports to be an option on stock of the General Theatres.

Mr. PECORA. The question was, Is it a true copy of a letter that you sent or caused to be sent to persons to whom it is addressed?

Mr. CLARKE. I assume it is.

Mr. PECORA. Please don't assume it. Now I want you to testify to the facts.

Mr. CLARKE. I don't recall the letter.

Mr. PECORA. Not even after having read it?

Mr. CLARKE. No; I do not.

Mr. PECORA. Will you please read it again and see if it refreshes your recollection.

Mr. CLARKE. I read every line of it.

Mr. PECORA. Do you recall the transaction to which that letter relates?

Mr. CLARKE. No; I do not.

Mr. PECORA. Do you say that no such transaction was had?

Mr. CLARKE. Oh, no.

Mr. PECORA. Do you say that such a transaction was had by you?

Mr. CLARKE. No.

Mr. PECORA. Is your mind a blank about it completely?

Mr. CLARKE. No; it is not a blank, but I am not going to answer your questions unless I know exactly what I am saying, and I do not have the details about that and I am not going to start answering questions.

Mr. PECORA. Do you recall any transaction of the kind referred to in that letter?

Mr. CLARKE. Yes; I think there was some such transaction, but I don't know what it was.

Mr. PECORA. Now, this letter, as you noticed, is signed "H. L. Clarke by O. E. Koegel"—K-o-e-g-e-l—attorney in fact." Who is Mr. Koegel?

Mr. CLARKE. Mr. Koegel was an attorney working for me at the time.

Mr. PECORA. And do you recall having authorized him to send this letter in your behalf?

Mr. CLARKE. No; I do not, but undoubtedly I did.

Mr. PECORA. I offer the letter in evidence, and ask that it be spread on the record.

The CHAIRMAN. Let it be admitted and spread on the record.

(Letter from "H. L. Clarke, by O. E. Koegel, attorney in fact", to Pynchon & Co., the Shermar Corporation, West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., Inc., dated July 9, 1929, was thereupon designated "Committee Exhibit No. 131, Nov. 16, 1933.")

Mr. PECORA. Who is Mr. Koegel?

Mr. CLARKE. Mr. Koegel was an attorney.

Mr. PECORA. Connected with what firm?

Mr. CLARKE. At that time he was working with me.

Mr. PECORA. What firm was he connected with, I asked you?

Mr. CLARKE. I said he was working for me.

Mr. PECORA. Was he a member of any firm?

Mr. CLARKE. No; not at that time. He is a member of the firm of Hughes, Schurman & Dwight at the present time.

Mr. PECORA. Now, the letter marked in evidence as committee's exhibit 131 reads as follows [reading]:

NEW YORK, N.Y., *July 9, 1929.*

PYNCHON & CO.,
THE SHERMAR CORPORATION,
WEST & COMPANY,
W. S. HAMMONS & CO.,
HALSEY STUART & CO., INC.

DEAR SIRS: This will confirm the arrangements made between you and the undersigned for the purchase by you from the undersigned of 50,000 shares and the option to be granted to you to purchase 200,000 shares of the common stock of General Theaters Equipment, Inc., a corporation to be organized by the undersigned under the laws of the State of Delaware.

Contemporaneously with the execution of this agreement there has been entered into between you or some of you and the undersigned two other agreements, one relating to the purchase by some of you of $6,000,000 principal amount of the 15-year convertible gold debentures of General Theaters Equipment, Inc., the other relating to the purchase by you of 300,000 shares of the common stock without par value of said General Theaters Equipment, Inc.

Each and every of the representations and agreements to be performed by the undersigned set forth in said two agreements herein above referred to are representations and agreements to be performed by the undersigned as if such representations and agreements were herein set forth in full. Subject to the correctness of all representations and agreements herein above referred to, the representations and agreements to be performed by the undersigned herein, and subject to the approval of your counsel as to all legal matters pertaining to the transactions herein referred to, you agree to purchase or cause to be purchased from the undersigned, and the undersigned agrees to sell to you or to the purchasers designated by you, 50,000 shares of common stock without par value of the General Theaters Equipment, Inc., said common stock to be fully paid and nonassessable, at a price of $20 per share. Delivery of said shares shall be made against payment therefor at the Chase National Bank at the city of New York at its office, 18 Pine Street, or at the office of Pynchon & Co., 111 Broadway, New York City, at your option, on August 1, 1929.

The undersigned hereby grants to you an option to purchase from the undersigned and/or to require to be issued and delivered to you or to purchaser or purchasers procured by you, all or any part of an additional 100,000 shares of the common stock of General Theaters Equipment, Inc., at the price of $20 per share, such option to continue in force and to be subject to the exercise by you at any time or from time to time during the period between July 15, 1929, and September 15, 1929.

In the event you exercise in full the aforesaid option given you to purchase 100,000 shares of such common stock, you shall have a further option to purchase and/or to require to be issued and delivered to you or a purchaser or purchasers procured by you, all or any part of an additional 100,000 shares of such common stock, at a price of $20 per share, such option to con-

tinue in force and to be subject to exercise by you at any time or from time to time during the period of 90 days from and after July 15, 1929.

At the option of the undersigned any or all of the common stock of said General Theaters Equipment, Inc., may be deposited in a voting trust to be created by an agreement satisfactory to you and your counsel and to be construed according to the laws of the State of New York. In case any of the shares of common stock of said General Theaters Equipment, Inc., shall be deposited in such voting trust, voting-trust certificates may be issued and delivered in lieu of and as an equivalent of certificates for such common stock under any of the provisions hereof. This instrument shall be construed according to the laws of the State of New York.

If the foregoing is in accordance with your understanding, please sign your acceptance in the space provided below.

Yours very truly,

H. L. CLARKE,
By O. E. KOEGEL,
Attorney in fact.

Accepted: Pynchon & Co., by W. F. Ingold, a partner; Shermar Corporation, by J. F.—

What is that name?

Mr. WIGGIN. Wernersbach.

Mr. PECORA. (Continuing.)

—Wernersbach, treasurer; West & Co., by Charles B. Wiggin, a partner; W. S. Hammons & Co., by W. S. Hammons, president; Halsey, Stuart & Co., Inc., by E. W. Niver, vice president.

Now, Mr. Clarke, you heard me read this letter into the record. Did the reading of it by me refresh your recollection concerning the transaction referred to in the letter?

Mr. CLARKE. No; but Mr. Kellar has made some inquiry, and he tells me that that option was given; that it was not exercised.

Mr. PECORA. How about the sale of the 50,000 shares that was made firm by this agreement?

Mr. CLARKE. That was sold.

Mr. PECORA. That was sold for a million dollars, wasn't it? Twenty dollars a share?

Mr. CLARKE. That is right.

Mr. PECORA. Do you recall that now? Do you recall the sale now?

Mr. CLARKE. I don't recall the sale; no.

Mr. PECORA. Is a million-dollar transaction by you of such negligible consequence that you easily forget it?

Mr. CLARKE. Certainly not.

Mr. PECORA. Have you made many sales of stock for a million dollars or more in your lifetime?

Mr. CLARKE. No.

Mr. PECORA. How do you account for the fact that you do not recall even now, with your recollection refreshed by your own letter, by your own agreement—you do not recall even now a sale involving as it did the sale by you for a million dollars of 50,000 shares of stock?

Mr. CLARKE. For the simple reason that frequently options are given and not exercised.

Mr. PECORA. I am not referring to an option now. I am referring to a sale.

Mr. CLARKE. I want to be sure what I am testifying to before I testify. You asked me if I recall that particular transaction, and I tell you, no.

Mr. PECORA. Do you now recall it?

Mr. CLARKE. I am told that such a transaction took place, and no doubt it did. I know that I sold about $1,000,000 worth of stock at one time, and probably that is the sale, because it is the only one I made.

Mr. PECORA. Had you forgotten about it when you were questioned about that by Senator Couzens last week?

Mr. CLARKE. I stated to you that I had all the stock, and more, that I ever had in the first place, and that through any sale of stock I had made, more money had been put back into the company by me, and I think my transactions and statements will bear that out. I now have——

Mr. PECORA. I am not asking about what you now have, nor did Senator Couzens ask you about what you now have when he asked you last week if you had sold any of that stock. It now seems that you did sell 50,000 shares of it and made your agreement to sell it on the very day the General Theatres Equipment Co. came into existence, and that you sold it for $1,000,000. Had you forgotten all about that when you answered Senator Couzen's question last week?

Mr. CLARKE. Yes.

Mr. PECORA. Is your memory that defective that you forget a $1,000,000 transaction?

Mr. CLARKE. I do not think my memory is too defective; no.

Mr. PECORA. Do you think it is good?

Mr. CLARKE. Yes.

Mr. PECORA. Mr. Clarke, do you recall, in the course of the testimony you gave last week, having been asked a number of questions concerning the arrangement that was made between the International Projector Corporation and the General Theatres Equipment Co. to enable the latter company to acquire the stock of the former company on an exchange basis?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You remember that in your testimony last week on that subject you testified in substance that the exchange for the stock of the International which you had was on the basis of 1¼ shares of General Theatres Equipment Co. stock for each share of International Projector Corporation stock; do you recall that?

Mr. CLARKE. Yes.

Mr. PECORA. Do you recall having also testified last week on that subject substantially to the effect that that same offer was made available to the other stockholders of International Projector Corporation?

Mr. CLARKE. Yes.

Mr. PECORA. But that such other stockholders, being the stockholders who came from the public, representing the general public, did not choose to avail themselves of that offer, and subsequently had to take share for share in exchange, instead of 1¼ shares for 1 share. Do you recall that testimony?

Mr. CLARKE. I recall that they were merely offered it. They did not have to take it.

Mr. PECORA. What is that?

Mr. CLARKE. Nobody had to take it. It was an offer.

Mr. PECORA. You do recall having testified that that offer was made to the other stockholders of International at the same time that it was made available to you?

Mr. CLARKE. I believe it was.

Mr. PECORA. The offer I am referring to is one whereby the General Theatres Equipment gave 1¼ shares of its capital common stock in exchange for each share of the International Projector Corporation common stock.

Mr. CLARKE. Yes.

Mr. PECORA. That is clear in your mind, is it not?

Mr. CLARKE. Yes.

Mr. PECORA. Is it the truth that at that time General Theatres Equipment Co., or rather, that that offer of the General Theatres Equipment Co. to exchange its shares for shares of the International Projector Corporation on the basis of 1¼ for 1, was made available to all the other stockholders of International Projector?

Mr. CLARKE. I believe it was. Otherwise I should not have so testified.

Mr. PECORA. Have you got the minute book of General Theatres Equipment, Inc.?

Mr. CLARKE. Have I?

Mr. PECORA. Yes.

Mr. CLARKE. No, sir.

Mr. PECORA. You know Mr. Carroll, do you not?

Mr. CLARKE. Yes.

Mr. PECORA. Is he connected with General Theatres?

Mr. CLARKE. Yes.

Mr. PECORA. Mr. Carroll, have you got the minute book?

Mr. CARROLL. Yes; I have.

Mr. PECORA. Will you please bring me the minute book of that corporation for July 11, 1939?

(Mr. Carroll hands document to Mr. Pecora.)

Mr. PECORA. While those books are being looked up, I want to read to you—and please follow me closely—the testimony that you gave last week on this subject, as it is to be found at pages 2089, 2090, and 2091, of the stenographic transcript [reading]:

> Senator COUZENS. Why was it that some of these others at one?
>
> Mr. CLARKE. For the reason that we wished to have control and——
>
> Senator COUZENS. Who wished to have control?
>
> Mr. CLARKE. I did and my associates, and they received one and a quarter shares. All of the others could have had the same had they come in on the exchange, but they did not; and after we had control, we withdrew that offer and made the other offer.
>
> Senator COUZENS. And that was accepted?
>
> Mr. CLARKE. Yes, finally; by most of them. Most of them bought this stock at little or nothing, as you can see, and they would have made a big profit out of it, anyway, had they sold it.
>
> Mr. PECORA. How many shares of the International Projector Corporation stock were exchanged for shares of the General Theatres Equipment Co. on a basis of one and a quarter shares of the latter for one share of the former?
>
> Mr. CLARKE. Eight hundred thousand shares.
>
> Mr. PECORA. And of that amount how many did you own at that time?
>
> Mr. CLARKE. Something less than 600,000 shares.
>
> Mr. PECORA. How many shares were exchanged on a share-for-share basis?
>
> Mr. CLARKE. Two hundred thousand shares.

Mr. PECORA. Who owned those 200,000 shares—the public?

Mr. CLARKE. I would say so; yes.

Mr. PECORA. Why was not the public given the same ratio of exchange that you were?

Mr. CLARKE. Everyone had the same opportunity for a time.

Mr. PECORA. I am asking you why the public were not given the same ratio of exchange that you received?

Mr. CLARKE. My answer is that they were given the same opportunity.

Mr. PECORA. How was the opportunity afforded to them?

Mr. CLARKE. How was it given to them?

Mr. PECORA. Yes.

Mr. CLARKE. Well, all the stockholders were told they could exchange their shares on that basis and they did not all do it.

Senator GORE. When you got enough stock to control, then the exchange price went down, did it not?

Mr. CLARKE. Yes, sir. We withdrew the offer and made it 1 share for 1 instead of one and a quarter for one.

Mr. PECORA. When was that done, Mr. Clarke?

Mr. CLARKE. You mean, when was the offer withdrawn?

Mr. PECORA. Yes; when was the offer originally made and when was the offer as originally made withdrawn and a new one substituted?

Mr. CLARKE. The original offer was made in August 1929, but I don't know the date; I think, about 60 or 90 days later as to the other.

Senator COUZENS. In what form was this offer made?

Mr. CLARKE. Advice to the stockholders by letter.

Senator COUZENS. By letter?

Mr. CLARKE. Yes, sir.

Mr. PECORA. When did you say it was withdrawn?

Mr. CLARKE. I have not the date.

Mr. PECORA. Can you not get it?

Mr. CLARKE. As I recall it was 60 to 90 days later.

Mr. PECORA. Who caused that offer to be withdrawn and a less favorable one substituted?

Mr. CLARKE. I believe I did.

Mr. PECORA. Do you think that was fair to these other stockholders?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Why? Do you think it was fair for the general public stockholders to get share for share and you to get one and a quarter shares for one share?

Mr. CLARKE. Yes, I do.

Mr. PECORA. Why was it fair?

Mr. CLARKE. They had the same opportunity that I had.

Now, let me ask you, Mr. Clarke, if that testimony so given by you was true?

Mr. CLARKE. So far as I know.

Mr. PECORA. You caused the General Theatres Equipment, Inc., to be organized, did you not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And you were its first president?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And you were its president at the time that the General Theatres Equipment, Inc., exchanged its shares for the shares of the stock of the International Projector Corporation, which you then personally owned, on a basis of one and a quarter for one—is that right?

Mr. CLARKE. Yes, sir.

Mr. PECORA. I want to show you this book. Please look at it and tell me if you can identify it as the original minute book of the board of directors of the General Theatres Equipment, Inc., including the period of July 1929 [handing document to the witness].

Mr. CLARKE. Yes. This is the minute book.

Mr. PECORA. I ask that that minute book be offered in evidence, but not spread on the record in view of its voluminous character.

The CHAIRMAN. Let it be admitted and marked.

(The document referred to, minute book, Board of Directors, General Theatres Equipment, Inc., July 1929, was received in evidence marked "Committee's Exhibit No. 132, Nov. 16, 1933", and the same is printed in part on page 3401.)

Mr. PECORA. Now, Mr. Clarke, will you be good enough to look at that minute book and show me anywhere in there the offer that was made to the general stockholders by the General Theatres Equipment to exchange their shares on a basis of one and a quarter shares of General Theatres Equipment Co. for one share of International Projector Corporation. Take your time and look through the book.

Mr. CLARKE. I do not know that it is in the minute book. I imagine it is not, but if you wish me to look through it I will.

Mr. PECORA (after a pause). Mr. Clarke, in order to expedite this examination, while you are looking at that minute book, see if you can find in it the printed letter that actually was sent out to the stockholders of International under date of July 15, 1929, offering to exchange stock of General Theatres Equipment for stock of the International Projector Corporation on a share-for-share basis. For that purpose I direct your attention to page 52 of the minute book.

Mr. CLARKE. I am getting into July now.

Mr. PECORA. Mr. Clarke, if you are looking for any offer to stockholders in that minute book on the basis of one and a quarter shares for one, I will predict that you are going to waste your time.

Mr. CLARKE. Perhaps.

Mr. PECORA. But I think you will find, at page 52 of the minutes, the offer on a share-for-share basis.

Mr. CLARKE. Yes. I have found that.

Mr. PECORA. You have not found the other, have you?

Mr. CLARKE. No.

Mr. PECORA. Do you expect to find the other?

Mr. CLARKE. Not after what you have just told me.

Mr. PECORA. What I have told you was based upon an examination of that minute book.

Mr. CLARKE. Surely.

Mr. PECORA. Do you still say that the General Theatres Equipment, Inc., gave to the stockholders coming from the general public the same offer that it gave to you to exchange its stock for shares of the International Projector Corporation on the basis of one and a quarter shares for one?

Mr. CLARKE. That is my belief.

Mr. PECORA. It is still your belief?

Mr. CLARKE. It is still my belief, although I do not see any letter here.

Mr. PECORA. Your belief has not in any way been demolished by anything you have learned this morning or heretofore?

Mr. CLARKE. No. In fact, I have been told within the last day or so that practically all the stock was eventually exchanged on a one-and-a-quarter basis, a lot of people having come in and claimed

that they ought to have had the privilege, and it was given to them. I do not know how much that was.

Mr. PECORA. Who told you that within the last day or so?

Mr. CLARKE. Who told me that?

Mr. PECORA. Yes.

Mr. CLARKE. I believe it was Mr. Ingold.

Mr. PECORA. He was one of the partners of Pynchon & Co.?

Mr. CLARKE. That is right. That matter could be easily verified.

Mr. PECORA. You said all the stockholders were given this opportunity at the same time you received it.

Mr. CLARKE. I believe that is true.

Mr. PECORA. Wait—to exchange their shares of International stock on a basis of one and a quarter for one—one and a quarter shares of General Theatres Equipment for one share of International. And you say that is still your belief?

Mr. CLARKE. Yes.

The CHAIRMAN. If that was done by letter, if it was done at all, it seems as though there ought to be in existence a copy of that letter somewhere.

Mr. CLARKE. I should think so.

The CHAIRMAN. You do not happen to have a copy of that?

Mr. CLARKE. No, sir; I do not.

Mr. PECORA. What is the date of the letter that was sent out to the stockholders offering to exchange shares of General Theatres Equipment for shares of the International on a share-for-share basis?

Mr. CLARKE. The date of this letter in the record book is July 15.

Mr. PECORA. What year?

Mr. CLARKE. 1929.

Mr. PECORA. At what meeting of the board of directors of General Theatres Equipment, Inc., was the proposition embodied in that letter adopted?

Mr. CLARKE. I suppose at that time.

Mr. PECORA. What was the date of the meeting of the board? It was July 11, was it not?

Mr. CLARKE. July 12, was it not? I do not see where any resolution was adopted to send this letter out, but it is probably here.

The CHAIRMAN. What was the date of the first meeting of the board of directors of the General Theatres Equipment, Inc.?

Mr. CLARKE. July 11, 1929.

Mr. PECORA. Do you find that printed form of letter dated July 15, 1929, embodied in the minutes of the meeting of the board held on July 11?

Mr. CLARKE. The date on top of these pages here preceding this letter is July 11.

Mr. PECORA. Yes.

Mr. CLARKE. I do not find it included in the minutes. That is why I am hesitating about the date.

Mr. PECORA. When was the General Theatres Equipment Corporation actually organized?

Mr. CLARKE. July 11, 1929.

Mr. PECORA. Will you let me have that minute book, please?

(The witness handed a document to Mr. Pecora.)

Mr. PECORA. At page 52 of the minute book which has been offered in evidence as Committee's Exhibit No. 132, I wish to read into the record the following excerpts from that page [reading]:

General Theatres Equipment, Inc., to the holders of International Projector Corporation common and preferred stocks.

General Theatres Equipment, Inc., hereby offers to exchange its common stock voting trust certificates for common stock of International Projector Corporation on a share-for-share basis. * * *

It is expected that any holder of the above-mentioned common stocks and/or preferred stocks and/or notes may take advantage of this offer by depositing the same with the trust department of the Chase National Bank of the City of New York, at 18 Pine Street, New York City, on or before the close of business August 23, 1929.

It is expected that delivery of General Theatres Equipment, Inc., common-stock voting trust certificates will be made on or before August 5, 1929, in exchange for common stock of International Projector Corporation and National Theatre Supply Co. deposited prior to that date. General Theatres Equipment, Inc., common-stock voting trust certificates will be delivered in exchange for common stock of International Projector Corporation and National Theater Supply Co. deposited after August 5, 1929, as promptly as the same can be prepared.

That is signed "General Theatres Equipment, Inc., by H. L. Clarke, president", dated July 15, 1929. Mr. Clarke, is it not a fact that that was the only offer that was made to the general stockholders of International Projector Corporation at that time?

Mr. CLARKE. That is the only one in the book, but I still believe that an offer was made to all the stockholders.

Mr. PECORA. This form of letter, embodying this offer, is in the minute book containing the minutes of the meeting of the board of the General Theaters Equipment Corporation held on July 11, 1929, which is the date at which General Theatres Equipment, Inc., came into existence.

Mr. CLARKE. That is right.

Mr. PECORA. How could there have been any offer other than this one made at any time prior to the date when the company itself was organized?

Mr. CLARKE. I agree that it does not look as though there could have been.

Mr. PECORA. Are you now satisfied that no such offer was made to the general stockholders?

Mr. CLARKE. On the evidence as presented, I would think that was correct, but I still have the belief that the same offer was made. I do not know how it was made, or when, but that is my recollection.

Mr. PECORA. How could it have been made?

Mr. CLARKE. I say, on the evidence it would not look as though it could. I am not trying to dispute the evidence.

Mr. PECORA. When was the offer made to you as a stockholder of International Protector Corporation to exchange your shares for shares of the General Theatres on a basis of one and a quarter shares of the latter for one share of the former?

Mr. CLARKE. When the company was organized.

Mr. PECORA. That is July 11?

Mr. CLARKE. Yes. It could not have been officially made before that.

Mr. PECORA. Is it now apparent, even to you, that you, as the owner of 600,000 of the outstanding 800,000 shares of the capital

common stock of International Projector Corporation, received from yourself, as the creator and controller and president of the General Theatres Equipment, Inc., an offer of exchange of stock on a basis that was 25 percent better than the one that the public received?

Mr. CLARKE. I have already testified that I received one and a quarter shares, and also many other stockholders. I have testified that there were about 800,000 shares that received one and a quarter. I have also stated this morning that I have been told, and believe that there were a lot of other stockholders that got one and a quarter, so I was not the only one that got it.

Mr. PECORA. Will you tell me how those other stockholders could have gotten it, in view of the evidence, the authenticity, and the force of which you now recognize and admit, that the offer made to the general stockholders was to exchange on a share-for-share basis?

Mr. CLARKE. How could they get it?

Mr. PECORA. Yes.

Mr. CLARKE. I suppose they might complain that the offer had not been held open long enough, and that it was not fair.

Mr. PECORA. There apparently was no offer made to the stockholders to exchange on the basis of one and a quarter for one, and you were willing to admit that a moment ago.

Mr. CLARKE. I am willing to admit that the evidence was as it is, but you are putting it this way, that I am the only one that received one and a quarter shares, and that is not true.

Mr. PECORA. Who else got it?

Mr. CLARKE. I do not know, but there were over 200,000 shares in addition that received it.

Mr. PECORA. Were not the other shareholders of International Projector Corporation that received one and a quarter shares for each share the stockholders who consisted of the bankers?

Mr. CLARKE. Very likely.

Mr. PECORA. And their holdings were included in this block of 600,000, were they not?

Mr. CLARKE. Eight hundred thousand.

Mr. PECORA. Eight hundred thousand.

Mr. CLARKE. I think so.

Mr. PECORA. Was anyone other than yourself and the bankers ever given this offer to exchange one and a quarter shares for one?

Mr. CLARKE. Mr. Pecora, as I have stated so many times, I believe such an offer was made, but I say, on the evidence, I do not see how it could have been.

Mr. PECORA. Now, the National Theatre Supply Co. was another corporation that you testified heretofore you caused to be organized.

Mr. CLARKE. Yes, sir.

Mr. PECORA. Were you the president of it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And the principal stockholder?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Were the shares of that company taken over by the General Theatres Equipment Co. in July 1929?

Mr. CLARKE. Yes, sir.

Mr. PECORA. On what basis of exchange?

Mr. CLARKE. On the basis of share for share.

Mr. PECORA. Share for share. That is, you received share for share, did you not, for your shares of National Theatre Supply Co.?

Mr. CLARKE. Yes.

Mr. PECORA. What did the stockholders of National Theater Supply who represented the general investing public get?

Mr. CLARKE. There was a total of 412,791 shares of National Theater which received share for share of General Theatres common, and there were 149,416 shares of National Theater receiving three quarters of a share for each share.

Mr. PECORA. Who were the stockholders who received share for share?

Mr. CLARKE. I was the principal stockholder.

Mr. PECORA. You were the principal stockholder. And who were the stockholders that received an exchange on the basis of three quarters of a share of General Theatres Equipment for each share of National Theatre Supply Co.? Were they the general public?

Mr. CLARKE. They were the other stockholders.

Mr. PECORA. By the other stockholders you mean the public, do you not?

Mr. CLARKE. Not necessarily.

Mr. PECORA. Whom do you mean?

Mr. CLARKE. A good deal of this stock, I believe, was held by the people from whom we had purchased and paid cash for their stores selling motion-picture equipment, and various lamp companies. I think most of that stock was held there.

Mr. PECORA. Why were these stockholders given only three quarters of a share of General Theatres for each share of National Theatre Supply Co. that they owned, while you, the largest stockholder, received share for share?

Mr. CLARKE. I would assign the same reason, the control, and also the added reason, which I have never mentioned before in this connection, namely, that one of the great reasons for forming the General Theatres Equipment was to exploit the inventions that we had perfected in the motion-picture art, and we believed they were going to revolutionize the industry.

Mr. PECORA. In order to exploit that revolutionary thing was it necessary for you to get share for share for your stock of National Theatres and the other stockholders to get only three quarters of a share for each share?

Mr. CLARKE. I only say that when this thing came about, these things were of known value, we thought, and still think, and that no doubt the value of the offer was the same, in our opinion, to those who got three quarters of a share as to those who got one share.

Mr. PECORA. I am not sure that I understand that reasoning of yours, Mr. Clarke.

Mr. CLARKE. Simply that there was an added value in there for this stock.

Mr. PECORA. Why should you have received that added value and not the other stockholders?

Mr. CLARKE. Well, for control, for one thing.

Mr. PECORA. What is that?

Mr. CLARKE. Because of the control, for one thing.

Mr. PECORA. You already had control, did you not?

Mr. CLARKE. Yes; but that is why I am saying the control of the company.

Mr. PECORA. Because you had control. Why was it necessary for you to be treated differently from the other stockholders, and more advantageously than they were treated?

Senator COUZENS. Just because he had the power to do it.

Mr. CLARKE. I said for the control of it, and I gave the other reason which you just heard.

Mr. PECORA. Did you think it was fair to the other stockholders for you to do that?

Mr. CLARKE. Evidently everybody thought it was fair at the time it was done.

Mr. PECORA. Did the other stockholders know at the time that you received share for share for your stock of National Theater Supply Co.?

Mr. CLARKE. Mr. Pecora, I have said time and again that I believe all these stockholders of these companies had the same opportunity.

Mr. PECORA. Show me any evidence that the other stockholders ever had that opportunity in the National Theater Supply Co.

Mr. CLARKE. I should like to do so if I can, and I will if I can.

Mr. PECORA. Do you still think you can?

Mr. CLARKE. Possibly.

Mr. PECORA. Now let me call your attention to that same letter from which I read before and which is page 52 of the minute book of the General Theatres Equipment, Inc., offered in evidence. You notice that that letter is addressed not only to the holders of International Projector Corporation, but also to the holders of National Theater Supply Co. common and preferred stocks, and that the letter contains the following statement which I did not read before [reading]:

> General Treatres Equipment, Inc., hereby offers to exchange its common stock voting trust certificates for common stock of National Theater Supply Co. on the following basis, namely, voting trust certificates, three quarters of a share of common stock of General Theatres Equipment, Inc., for each share of common stock of National Theatre Supply Co.

That offer was held open until August 5, 1929. Do you still say that the other stockholders were given the same opportunity that you gave to yourself?

Mr. CLARKE. I say that I believe they were.

Mr. PECORA. Do you still believe it?

Mr. CLARKE. I am not in a position to prove it to you.

Mr. PECORA. Do you still believe it?

Mr. CLARKE. Yes.

Mr. PECORA. Your belief, apparently, is stronger than your memory.

Mr. CLARKE. When I have a belief, I cannot be blamed for sticking to it. I still believe it.

Mr. PECORA. I am not blaming you for sticking to it. It is commonly done.

The CHAIRMAN. Who composed this voting trust?

Mr. CLARKE. The voting trust of General Theatres?

The CHAIRMAN. Yes.

Mr. CLARKE. You mean at the beginning?

The CHAIRMAN. Yes. You refer to it here as the voting trust.

Mr. CLARKE. That is right—voting-trust certificates. There were several voting trusts, Senator, and I would not like to answer without looking it up.

Mr. PECORA. Look it up.

Mr. CLARKE (after examining documents). I was a member of the voting trust.

Mr. PECORA. Who else were voting trustees? Do you want the book?

Mr. CLARKE. Yes.

(Mr. Pecora hands book to the witness.)

Mr. CLARKE. The three voting trustees of General Theatres in the beginning were myself, H. L. Clarke, Walter S. Hammons, and W. F. Ingold.

Mr. PECORA. Walter S. Hammons was one of the members of the firm of W. S. Hammons & Co., which was one of the bankers of this corporation?

Mr. CLARKE. That is right.

Mr. PECORA. And Ingold was a partner of Pynchon & Co., which is another one of the bankers of the banking syndicate of this corporation?

Mr. CLARKE. Yes.

Mr. PECORA. West & Co. were another of the bankers in this banking syndicate?

Mr. CLARKE. Yes.

Mr. PECORA. Do you know whether the Charles Wiggin, who was a partner of West & Co., is related to Mr. Albert H. Wiggin?

Mr. CLARKE. Yes; I believe he is a relative.

Mr. PECORA. Mr. Wiggin, can you answer that specifically?

Mr. WIGGIN. His father and my father were cousins.

Mr. PECORA. Why were voting trust certificates issued at the outset of General Theatre Equipment, Inc., instead of the usual common stock certificates?

Mr. CLARKE. I would say that during this period it was usual to issue voting trust certificates—it was not unusual. Many corporations have voting trust certificates for their stock, to maintain their management.

Mr. PECORA. Was it done to maintain their management?

Mr. CLARKE. Yes.

Mr. PECORA. How long did these voting trustees continue to serve?

Mr. CLARKE. I think they continued to serve right up to the latter part of 1930.

Mr. PECORA. When did the General Theatres Equipment, Inc., go into receivership?

Mr. CLARKE. Early in 1932; January, I believe. Do you have the date? [After conferring with an associate.] February 29, 1932.

Mr. PECORA. Did the common stockholders of the General Theatres Equipment, Inc., ever receive anything but voting trust certificates?

Mr. CLARKE. You mean representing their stock?

Mr. PECORA. Yes.

Mr. CLARKE. I think not.

Mr. PECORA. Mr. Clarke, who actually controlled General Theatres Equipment, Inc., from the time of its organization in July of 1929 to the time in 1932 when it went into receivership?

Mr. CLARKE. It was the voting trustees.

Mr. PECORA. The voting trustees at all times controlled it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And you were one of the voting trustees at all times, weren't you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And the other voting trustees were representatives of the banking syndicate?

Mr. CLARKE. That is correct.

The CHAIRMAN. You stated a moment ago that the voting trustees served until the latter part of 1931, didn't you?

Mr. PECORA. The latter part of 1930, I think he said.

Mr. CLARKE. 1930; yes, sir.

The CHAIRMAN. Well, between that time on down.

Mr. CLARKE. Possibly they served right up to the time of the receivership, but there was a change in there at some time, and I don't know the date.

Mr. PECORA. The only change was a change in personnel, wasn't it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And they served on up to the end?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Mr. Clarke, why don't you answer the questions put to you in a manner that would give the committee the information that it seeks?

Mr. CLARKE. I am doing the best I can.

Mr. PECORA. Well, try to do a little better, if you please. Just try.

Mr. CLARKE. For my guidance, Mr. Pecora, would you mind telling me how I could have answered that question more clearly?

The CHAIRMAN. You don't remember any changes in the voting trustees, do you?

Mr. CLARKE. I don't remember the date.

Senator COUZENS. But how about in the matter of personnel?

Mr. CLARKE. Yes; there was a change. Mr. Hammons resigned and I do not know who was put in his place.

Mr. PECORA. Now, Mr. Clarke, when the General Theatres Equipment took over in July of 1929, by an exchange of stock, the National Theatre Supply Co. what was the book value of the stock of the National Theatre Supply Co.?

Mr. CLARKE. I don't know.

Mr. PECORA. Well, now, let me show you the application made to the New York Stock Exchange to list the shares of General Theatres Equipment, Inc., which has heretofore been marked in evidence as "Committee Exhibit No. 125", as of November 10, 1933. Let me call your attention to that page thereof which, in the upper right-hand corner bears the number "A"—well, what is known as page 19 rather of this application. Isn't it a fact that as of June 30, 1929, which was 2 weeks before the exchange was made, the total capital and surplus of National Theatre Supply Co. was $4,199,459.70, of which $3,540,419.93 represented capital stock, and $659,039.77 represented surplus. Is that right?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Is that right, now you have looked it over?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, among the capital stock of the National Theatre Supply Co. of that time was an issue of preferred stock callable at 107½, wasn't there?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And the callable value of that preferred stock was $2,150,000.

Mr. CLARKE. Yes.

Mr. PECORA. There was also outstanding at that time $235,800 principal amount of notes, callable at $105, were there not?

Mr. CLARKE. That is right.

Mr. PECORA. So that the callable value of those notes at that time was $247,590; is that right?

Mr. CLARKE. That is correct, if you have calculated it.

Mr. PECORA. What was that?

Mr. CLARKE. I say, that is approximately correct, and is probably absolutely correct if you have calculated it, but I have not figured it.

Mr. PECORA. There was also outstanding at that time 555,000 shares of common stock of no par value.

Mr. CLARKE. It is 554,000 shares, I believe.

Mr. PECORA. That gave a book value to the common stock of about $3.22 a share as of June 30, 1929, didn't it?

Mr. CLARKE. Isn't it $3.70 a share? Or maybe I misunderstood your question.

Mr. PECORA. Well, it was between $3 and $4 a share. I will give you a range of a whole dollar. I want to be generous this morning.

Mr. CLARKE. Well, it is $3.70 and something. I think that is what you said yourself, probably, but I don't remember.

Mr. PECORA. Well, $3.77, we will say, and I will accept your figure. Now, at what valuation was that stock taken over by the General Theatres Equipment Co.?

Mr. CLARKE. At a nominal value of $12,787,578.

Mr. PECORA. Did you say that figure was $12,787,578?

Mr. CLARKE. Yes, sir.

Senator COUZENS. Why do you say "nominal" value?

Mr. CLARKE. Because I believe it is a term that is usually used for a value that is set up on the books of a holding company for stock acquired. It really has no relationship to the assets. It is a purely nominal figure, used, or calculated by the auditors and the people in the company, to denote what they think that stock is going to be worth.

Senator COUZENS. Well, it is a speculative value rather than a physical asset value?

Mr. CLARKE. Yes, sir.

Senator COUZENS. Does it represent what you paid for it?

Mr. CLARKE. No, sir.

Senator COUZENS. How about the computation of it? How did you compute it in this case?

Mr. CLARKE. Well, the same as it was in the case of the International Projector Corporation.

Mr. PECORA. I didn't hear you.

Mr. CLARKE. I say, the same method was used in computing the value of this stock that was used in the exchange for the International Projector Corporation stock, namely, the potential earning value, and actual earning value.

Senator COUZENS. May I ask, Mr. Pecora: Is there anything in the statement you have before you to indicate how they arrived at this figure of 12 million dollars? Or what was the earning power, or what was it that would indicate that value?

Mr. PECORA. I have my own theory about it, and am perfectly willing to express it. They adopted as a basis of value the market quotation on the curb. Is that correct, Mr. Clarke?

Mr. CLARKE. I think that could be said to be a part of the basis. But I think the basis also was the one I stated. But you say it was that, and probably it figures out more correctly than my statement. It is probably a more tangible statement.

Mr. PECORA. I did not say this was more correct than your statement. It is an assumption of mine.

Mr. CLARKE. I think it is a correct assumption, too.

Senator COUZENS. Was that carried as the value at the time the exchange was made?

Mr. PECORA. The book value of the outstanding shares of common stock, Senator Couzens, was about $1,800,000. That was taken over at this value of $12,787,000.

Senator COUZENS. And was that difference made up because of the price of the stock on the curb exchange?

Mr. PECORA. That is the only way I would explain it.

Senator COUZENS. Does that mathematically account for the difference?

Mr. PECORA. It would approximate it.

Mr. CLARKE. Mr. Pecora, in your calculation you deducted the notes, didn't you?

Mr. PECORA. I deducted both the notes and the preferred stock, certainly, after getting the value of the common stock.

Mr. CLARKE. From the total of the capital stock and surplus?

Mr. PECORA. Yes.

Mr. KELLER. That has already been deducted in arriving at that figure, Mr. Pecora.

Mr. CLARKE. Which would make little difference.

Mr. PECORA. It would make a little difference, do you say?

Mr. CLARKE. It would make little difference.

Mr. KELLER. It would make a difference of the amount of the notes.

Mr. PECORA. Those notes were retired out of the cash provided by General Theatres, weren't they?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Well, then, there is a difference between the two methods, but what is the actual difference?

Mr. CLARKE. If it were deducted prior to that time it would be deducted twice.

Mr. KELLER. You are taking the capital stock and surplus as shown by the balance sheet and deducting the preferred stock, and also you are deducting the notes?

Mr. PECORA. Yes.

Mr. KELLER. I think you are entitled only to deduct the preferred stock.

Mr. PECORA. The notes were paid by cash furnished by the General Theatres Equipment.

Mr. KELLER. That has no relation to the balance sheet.

Mr. PECORA. But it has a relation to the price paid if they were taken over by General Theatres Equipment. If General Theatres Equipment, out of its treasury, supplied the cash for retiring the notes, that would be so. It seems to me it is a difference between six and half a dozen.

Mr. KELLER. It is a difference between computing book value and the balance sheet of General Theatres Equipment.

Mr. PECORA. Giving you the benefit of the doubt we deducted $247,590 on account of the notes. Let us add that to the $1,800,000, which gives us by our method a resultant book value in stock of a little over 2 million dollars. And that stock was entered by the G.T.E., meaning General Theatres Equipment, at $12,787,000.

Mr. CLARKE. That is right.

Mr. PECORA. So there was a mark-up there of over 10,000,000, of over $10,700,000, wasn't there?

Mr. CLARKE. I beg pardon?

Mr. PECORA. Wasn't there such a mark-up?

Mr. CLARKE. Let me see [figuring].

The CHAIRMAN. Do you call that water?

Mr. CLARKE. No; I don't. I would call it nominal value placed on the books of the company for the stock.

Mr. PECORA. Isn't that what is usually called water, Mr. Clarke?

Mr. CLARKE. I should say that sometimes it is called water and sometimes it is called what I call it, nominal value of the shares.

Mr. PECORA. Which would mean one and the same thing.

(Mr. Clarke merely shrugs his shoulders.)

Mr. PECORA. Mr. Clarke, please answer. That shrug of your shoulders does not get on the record.

Mr. CLARKE. It depends, whether it means the same thing. But that is too bad.

Mr. PECORA. Now, prior to the creation of General Theatres Equipment, Inc., according to the testimony you gave last week, you caused to be acquired a company called J. E. McAuley Manufacturing Co., and one called Strong Electric Co., and another one called Ashcraft Automatic Arc Co., and a concern called Hall & Connolly, Inc. Do you remember that?

Mr. CLARKE. Yes, sir. [After a pause.] Mr. Pecora, may I correct that answer?

Mr. PECORA. Yes.

Mr. CLARKE. Did you say I testified to that last week?

Mr. PECORA. Well, you testified in substance that you took those companies over.

Mr. CLARKE. That we took over some companies.

Mr. PECORA. And those are the companies.

Mr. CLARKE. Yes; they are. I just wanted to be correct in my answer to your question as propounded.

Mr. PECORA. The companies that you testified to last week.

Mr. CLARKE. We said lamp companies last week.

Mr. PECORA. Are those the names of the lamp companies, or the firms, that you referred to?

Mr. CLARKE. That is correct.

Mr. PECORA. Do you remember what they cost you?

Mr. CLARKE. Yes.

Mr. PECORA. What?

Mr. CLARKE. They cost a total of $3,232,422.95.

The CHAIRMAN. In cash or stock?

Mr. CLARKE. Cash.

The CHAIRMAN. Who paid that?

Mr. CLARKE. I paid for them.

Mr. PECORA. How much did you say you paid?

Mr. CLARKE. It was $3,232,422.95.

Mr. PECORA. Whose funds or checks were used in making such payments?

Mr. CLARKE. I think drafts were used.

Mr. PECORA. What was that?

Mr. CLARK. I think drafts were used, or certified checks.

Mr. PECORA. Out of whose funds?

Mr. CLARKE. Out of my funds, out of funds furnished by me.

Mr. PECORA. In whose name were those four firms or lamp companies taken over?

Mr. CLARKE. I think all the contracts were made by myself.

Mr. PECORA. Made by you individually?

Mr. CLARKE. By me individually, yes.

Mr. PECORA. And did you proceed to acquire those companies individually at first?

Mr. CLARKE. Do you mean separately by me?—Yes.

Mr. PECORA. Well, did you—let me see.

Senator COUZENS. He has answered your question; yes.

Mr. PECORA. How long before those companies or firms were acquired by General Theatres Equipment, Inc., did you acquire them?

Mr. CLARKE. Well, in the 6 months I should say preceding, or perhaps a shorter time.

Mr. PECORA. Did you acquire them by the same general method that you used in acquiring all the outstanding capital stock of the Nicholas Power Co.?

Mr. CLARKE. Well, the most of those companies were owned individually.

Mr. PECORA. Yes.

Mr. CLARKE. More so than in the case of the others. In a few of them we had to consider a number of stockholders, but only a few of them.

Mr. PECORA. Before those companies were acquired by General Theatres Equipment did you by the same general process that you followed in the case of Nicholas Power Co. acquire the stock of those firms or companies?

Mr. CLARKE. I did not have as much difficulty in acquiring them.

Mr. PECORA. You did it the same, but not with as much difficulty, is that it?

Mr. CLARKE. Yes, sir. The most of the contracts, as I recall, were option purchase contracts with small sums put up. The largest company, I think, had $25,000 for the option.

Mr. PECORA. So that these four companies and the Mitchell Camera Co. were acquired by General Theatres Equipment, but General Theatres Equipment virtually acquired them from you?

Mr. CLARKE. That is correct; or I acquired them for the benefit of General Theatres Equipment.

The CHAIRMAN. What did General Theatres Equipment pay you for them?

Mr. CLARKE. The same amount that I paid out.

Mr. PECORA. How much was that?

Mr. CLARKE. It was the total figure that I gave you, three million two hundred thirty-two thousand and odd dollars.

Mr. PECORA. It was $3,232,422.95, wasn't it?

Mr. CLARKE. That is correct.

Mr. PECORA. Is that exactly what they had cost you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Have you got the agreements, or any of the agreements, that were entered into in connection with your acquisition of the stock of those companies? I am referring now to J. E. McAuley Manufacturing Co., Strong Electric Co., Ashcraft Automatic Arc Co., and Hall & Connolly, Inc.

Mr. CLARKE. Yes; but we haven't them here now.

Mr. PECORA. Will you let me have them during the luncheon hour?

Mr. CLARKE. We have them at the hotel.

Mr. PECORA. Will you have them here at 2 o'clock?

Mr. CLARKE. Yes, sir.

Mr. PECORA. What was the book value, the total book value, of the J. E. McAuley Manufacturing Co., Strong Electric Co., Ashcraft Automatic Arc Co., and Hall & Connolly, Inc., at the time General Theatres Equipment took them over for approximately 3 million dollars?

Mr. CLARKE. Will you furnish us the stock listing application to refer to?

Mr. PECORA. Yes; here it is.

Mr. CLARKE. One minute. [After some figuring.]

The CHAIRMAN. Can you now give us an answer to that question?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. Go ahead.

Mr. CLARKE. The total book value of the four lamp companies was $484,114.08.

Mr. PECORA. I did not get that figure.

Mr. CLARKE. It is $484,114.08.

Mr. PECORA. And the General Theatres Equipment paid $3,232,422.95?

Mr. CLARKE. No. That includes the Mitchell Camera Co. of $1,475,000, which should be deducted from that figure you mention. The total cost of the four lamp companies you mentioned was $1,757,422.

Mr. PECORA. What was that figure?

Mr. CLARKE. It is $1,757,422.

Mr. PECORA. Of the four lamp companies?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And what was the book value of the Mitchell Camera Co. at the time it was taken over by General Theatres Equipment?

Mr. CLARKE. That is not shown here on the stock listing application, and we haven't got it. The Mitchell Camera Co. was not taken over by General Theatres Equipment as such. It was taken over through the medium of the Grandeur Co.

Mr. PECORA. Taken over by the Grandeur Co., which in turn was taken over by General Theatres Equipment?

Mr. CLARKE. Yes, sir.

Mr. PECORA. I will come to that presently. In other words, according to the testimony you have given this morning the book value of the National Theatres Supply Co. at the time it was taken over by General Theatres Equipment, was about $2,050,000. That is, without deducting the callable value of the notes, giving you the benefit of that.

Mr. KELLER. We are entitled to it.

Mr. PECORA. And you are getting it. I don't know whether you are entitled to it or not. It was taken over at a valuation of $12,787,578, or an excess of $10,737,000 above its book value. And the four lamp companies were taken over at an excess of $1,273,000 over and above their book value.

Mr. CLARKE. I beg pardon. They were taken over at cost, at what they were purchased for.

Mr. PECORA. Now I ask you, was it not $1,273,000 over and above their book value?

Mr. CLARKE. Yes.

Mr. PECORA. All right.

Mr. CLARKE. I say they were taken over at their cost.

Mr. PECORA. Well, I am asking you one question and you want to answer another. Just answer the one I am asking you, will you?

Mr. CLARKE. What one is that?

Mr. PECORA. The four lamp companies, according to your testimony, were taken over by the General Theatres at a price of $1,273,000, approximately, over and above their book value?

Mr. CLARKE. That is correct.

Mr. PECORA. All right. The National Theatres Supply Co. was taken over at a cost of $10,737,000, approximately, over and above the book value?

Mr. CLARKE. That is correct.

Mr. PECORA. And last week you testified that the International Projector Co. was taken over at $28,500,000 as against a book value of $2,225,000, or in excess of $26,275,000, approximately. Do you recall that?

Mr. CLARKE. I do.

Mr. PECORA. Which, according to my calculation, results approximately in the General Theatres having taken over these various subsidiaries at a valuation of some 38 million dollars over and above their book value in July 1929.

Senator GOLDSBOROUGH. Do you mean by that that they set up a nominal value of 40 million dollars for something that actually cost them only about $3,600,000, showing about 36 million dollars of what might be termed "water"?

Mr. PECORA. Nearly 38 million dollars of water; yes.

The CHAIRMAN. The committee will now take a recess until 2 o'clock.

(Thereupon, at 12:47 p.m., a recess was taken until 2 p.m., the same day, Thursday, Nov. 16, 1933.)

AFTERNOON SESSION

The subcommittee resumed at 2:25 p.m. on the expiration of the recess.

The CHAIRMAN. The subcommittee will resume. You may proceed, Mr. Pecora.

TESTIMONY OF HARLEY L. CLARKE, CHICAGO, ILL.—Resumed

Mr. PECORA. Mr. Clarke, have you with you now the records that you were asked to produce during your examination this afternoon?

Mr. CLARKE. Yes, sir. They will be here in a moment. We brought the cases down. They are being unpacked. Mr. Keller will have them here in a moment.

Mr. PECORA. Where are they?

Mr. CLARKE. They are out in the room outside here. Mr. Keller just came in with me now.

Mr. PECORA. Oh, they are unpacking them?

Mr. CLARKE. Yes.

Mr. PECORA. The papers we want now are the papers with regard to the acquisition of the four lamp companies.

Mr. CLARKE. Yes.

Mr. PECORA. And anything that you might have bearing on that Gold Street property.

Mr. CLARKE. Yes. I do not think we have any of those.

Mr. PECORA. Do you have any of those papers in Washington at all?

Mr. CLARKE. No; I do not think we do.

Senator COUZENS. While we are waiting for those papers, Mr. Clarke, you could perhaps elucidate what you mean as to the difference between nominal value of a stock as you have explained it this morning, and where you say on a financial statement: Patents or good will, or something, $1. Just what is the difference there, because in the latter case they explain it as a nominal value also?

Mr. CLARKE. Well, the General Theatres did not acquire the assets of any corporation. They acquired the stock. The stock of these corporations was exchanged for General Theatres stock; and I believe that it has always been customary for holding companies to set up on their books the nominal value of the stock computed on a basis as Mr. Pecora suggested this morning of the market. That is what I mean by nominal value.

Now, in this case the exchange of the stock was made, as you perhaps recall, on a basis in the International, of 1 share of the International for 1¼ shares of General Theatres to the extent of about 800,000 shares, and possibly more. Now, that exchange was made, and also the exchange on the basis of share for share of the National Theatre Supply Co. for the General Theatres' stock as a part consideration of the contract with the bankers in

financing and in initiating the General Theatres Corporation. Of course, these negotiations took some time.

Before the first meeting of the company could take place it had to be formed, all these arrangements had to be made, contracts had to be made in full, and that took several weeks anyway. So that at the time the corporation was formed, already the control of these companies had been secured, and that was a part of the consideration of the contract in the financing, the initial financing. And while the option was given on a lesser basis to other stockholders, as it turned out they had nothing to lose by having that option, but everything to gain, because they could wait and see how that thing turned out. As a matter of fact those people who kept their stock in the International Projector Corporation and those people who kept their stock in the National Theatre Supply—there are a few—have a value today in their stock much greater than the General Theatres. The General Theatres value has depreciated because of the lack of earnings of the Fox Co. which it acquired. And these other companies which are constituent parts of the International Projector Corporation and the National Theatre Supply Co. and the other companies are not in receivership. They are still going concerns.

The CHAIRMAN. Those other companies are still doing business, are they?

Mr. CLARKE. Yes.

Senator COUZENS. Are they paying any dividends?

Mr. CLARKE. No, I do not think so.

Senator COUZENS. I still go back to the original question. How do you harmonize your use of the words "nominal value" in fixing your books up, and in another case where they put in patents or goodwill for a dollar and call them nominal value? Just what is the distinction?

Mr. CLARKE. Well, I imagine if a patent was so valuable, Senator, that it was taken in for stock that had a market value, that that would be set up as the market value of that patent. Of course, these holding companies have made a practice of that, I think you will find generally, and I am not saying that it is a good practice. They have made that a practice. And it is customary to put those values on the books, call them nominal values, and treat them as investments and write them down if the securities go down in value.

Senator COUZENS. In fixing those nominal values do you take into consideration the earning power in the past or prospective earning power?

Mr. CLARKE. Well, I consider that both the actual earning power of the company, and also the potential earning power would be taken into consideration. That is, of course, what fixes the values of the stock on the market.

The CHAIRMAN. What is the total number of shares of the General Theatres?

Mr. CLARKE. The total number of shares exchanges was 1,840,766.

Senator TOWNSEND. That was the total number sold, do you mean?

Mr. CLARKE. The total number of shares issued.

Senator TOWNSEND. Issued.

Mr. CLARKE. Yes.

Senator COUZENS. Mr. Pecora, are you later going into the subject of the acquisition of Fox Films?

Mr. PECORA. Yes, sir. All that plays a very important part in this whole injury as to the General Theatres Equipment.

The CHAIRMAN. 1,840,766 shares?

Mr. CLARKE. Yes. Mr. Pecora, I regret to tell you that Mr. Keller tells me he is mistaken, and that he has not got those contracts here. We did have them here and we took them up to New York last week, but for some reason we do not have them here now. We can get them for you tomorrow morning. I tell you we hope to get them tomorrow morning. If we start now we can, probably.

Mr. PECORA. All right, then. Mr. Clarke, do you know what has become of the minute books and other records of the Nicholas Power Co.?

Mr. CLARKE. No; I do not. Mr. Burns tells me he cannot find them.

Mr. PECORA. Have you made an effort to find them?

Mr. CLARKE. No, sir.

Mr. PECORA. Well, Mr. Burns, I understand, did make an effort and simply cannot find them; does not know what became of them. I wondered if you knew, inasmuch as you were the sole stockholder of the Nicholas Power Co. at the time that your other corporation, the International, acquired it.

Mr. CLARKE. Of course, the records must have been there at the time. There was no occasion for using them, and I personally have never sought to find them at any time, even prior to this investigation. And then, when Mr. Burns was requested to get them, he tells me he cannot find them. That is all that I can tell you about it. Of course, you realize that I am not located at the company, and only have a nominal connection with the company at the moment.

Mr. PECORA. What do you mean by nominal connection?

Mr. CLARKE. Well, I mean I am a director in some of these companies. I am a director of the General Theatres; I am a director, I believe, of the International.

Mr. PECORA. Were you not, as a matter of fact, the individual that put S. R. Burns into the Nicholas Power Co. as president?

Mr. CLARKE. No; I did not have anything to do with it.

Mr. PECORA. Well, you knew Mr. Burns before he became president?

Mr. CLARKE. Yes. I heard him testify yesterday that he had been with the company since 1914. I never got acquainted with anybody in the company until 1921 or 1922.

The CHAIRMAN. The Nicholas Power Co. is not engaged in business now, is it?

Mr. CLARKE. No, sir.

Mr. PECORA. The General Theatres Equipment, Inc., was organized to operate as a holding company, was it not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And was that so organized in pursuance of your ideas?

Mr. CLARKE. Yes; I think so.

Mr. PECORA. In other words, what I want to ask you is: Were you the moving spirit in the organization of the General Theatres Equipment, Inc.?

Mr. CLARKE. I would say so; yes.

Mr. PECORA. And the bankers who assisted you to organize and to finance it were the Chase Securities Corporation, Pynchon & Co., West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., were they not?

Mr. CLARKE. That is correct.

Mr. PECORA. And, as organized, the General Theatres Equipment had an authorized capital stock of 5 million shares of no par value, did it not?

Mr. CLARKE. Yes; that is correct.

Mr. PECORA. And of that amount how many shares were actually issued?

Mr. CLARKE. Two million eight hundred and forty thousand seven hundred and sixty-six.

Mr. PECORA. There were actually issued 2,840,766?

Mr. CLARKE. That is correct.

The CHAIRMAN. He said one million before.

Mr. PECORA. That is what I thought he said—1,840,000.

Mr. CLARKE. Yes—840 thousand.

Mr. PECORA. One million or two million?

Mr. CLARKE. Two million.

Mr. PECORA. When you were asked off the record a question by Senator Fletcher as to the number of shares of stock that this General Theatres Equipment Co. issued, the number as I recall you gave it was 1,840,766.

Mr. CLARKE. No. What I started to do was to give him the stock which was exchanged. And then I asked him "The total?" And he said "Yes", and I gave him the total.

Mr. PECORA. What is the total?

Mr. CLARKE. Two million eight hundred and forty thousand, the figure I finally gave him.

Mr. PECORA. Two million eight hundred and forty thousand seven hundred and sixty-six?

Mr. CLARKE. Yes.

Mr. PECORA. How much of that was issued at the time the company was launched?

Mr. CLARKE. The company was launched on July 11, and including the stock sold to the bankers on August 1, which I take would be included in the launching of the company, the total amount is 2,040,811.

Mr. PECORA. Now, before the actual incorporation of General Theatres Equipment on July 11, 1929, did you not enter into a written agreement with Chase Securities Corporation, Pynchon & Co., West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., Inc., dated July 9, 1929, under the terms and provisions of which the General Theatres Equipment, Inc., was organized?

Mr. CLARKE. Yes; I entered into a contract. I do not recall the date.

Mr. PECORA. I show you what purports to be a photostatic reproduction of copy of such contract. Will you look at it and tell us if you recognize it to be a true and correct copy thereof [handing same to Mr. Clarke]?

Mr. CLARKE (after examining same). Yes, sir.

Mr. PECORA. I offer it in evidence and ask to have it spread upon the record.

The CHAIRMAN. It may be received in evidence and placed in the record.

(General Theatres Equipment, Inc. Debenture Purchase Agreement between H. L. Clarke and Chase Securities Corporation. Pynchon & Co., West & Co., W. S. Hammons & Co., Halsey, Stuart & Co., Inc., dated July 9, 1929, was received in evidence and marked "Committee Exhibit No. 133 of Nov. 16, 1933.")

Mr. PECORA. The document marked "Committee's Exhibit 133" in evidence is as follows. Dated New York, N.Y., July 9, 1929 [reading]:

CHASE SECURITIES CORPORATION, PYNCHON & CO., WEST & CO., W. S. HAMMONS & CO., HALSEY STUART & CO., INC.

DEAR SIRS: This will confirm the arrangements made between you and the undersigned for the purchase by you of $6,000,000 principal amount of debentures (hereinafter more fully described) of General Theatres Equipment, Inc., a corporation to be organized by the undersigned under the laws of the State of Delaware.

General Theatres Equipment, Inc., when organized, will acquire the following: Fifty percent of the entire issued and outstanding capital stock of Grandeur, Inc., a corporation organized in 1929 and existing under the laws of the State of New York; all of the issued and outstanding capital stock of Hall & Connolly, Inc., a corporation organized and existing under the laws of the State of New York; all of the issued and outstanding capital stock of a corporation to be organized under the laws of the State of Delaware or Ohio under the name of the Strong Electric Corporation, or a similar name, which new corporation will acquire all of the property, business, and assets of the Strong Electric Co., a corporation organized and existing under the laws of the State of Ohio.

All of the issued and outstanding capital stock of a corporation to be organized under the laws of the State of Delaware or Illinois under the name of J. E. McAuley Manufacturing Co., or a similar name, which new corporation will acquire all of the property, business, and assets of J. E. McAuley Manufacturing Co., a corporation organized and existing under the laws of the State of Illinois; all of the issued and outstanding capital stock of a corporation to be organized under the laws of the State of Delaware or California—

You were not playing any favorites, were you? [Continuing reading:]

under the name of Ashcraft Automatic Arc Co., or a similar name, which new corporation will acquire all of the property, business, and assets of Ashcraft Automatic Arc Co., a copartnership composed of Clarence S. Ashcraft and Mary G. Ashcraft, both of Los Angeles, Calif.; all of the issued and outstanding capital stock of Theatre Equipment Acceptance Corporation, a corporation organized and existing under the laws of the State of Delaware; 550,800 shares of the common stock, out of a total of 1,000,000 shares thereof issued and outstanding, of International Projector Corporation, a corporation organized and existing under the laws of the State of Delaware; 294,421 shares of the common stock, out of a total of 510,600 shares thereof, issued and outstanding, of National Theatre Supply Co., a corporation organized and existing under the laws of the State of Delaware.

Grandeur, Inc., a corporation of the State of New York, 50 percent of the capital stock of which is to be acquired by General Theaters Equipment, Inc., will acquire all of the common stock of Mitchell Camera Corporation, a corporation to be organized under the laws of the State of Delaware, which latter corporation will acquire all of the property, business, and assets of the Mitchell Camera Co., a corporation organized and existing under the laws of the State of California, together with the land in Los Angeles, Calif., that has been acquired, the buildings being erected thereon, and the machinery and equipment to be installed therein, for the corporation to be organized under the laws of the State of Delaware as aforesaid.

The Mitchell Camera Co. is engaged in the manufacture of the Mitchell motion-picture camera; Hall & Connolly, Inc., the Strong Electric Co., J. E. McAuley Manufacturing Co., and Ashcraft Automatic Arc Co. are respectively engaged in the manufacture, distribution, and sale of electric arc lamps used in theaters. Theater Equipment Acceptance Corporation is engaged in purchasing or otherwise acquiring and selling or otherwise disposing of, and in trading and dealing in, chattel mortgages, conditional sales contracts, trade acceptances, and other obligations and commercial paper executed and delivered in respect of the purchase price, or deferred payments upon the purchase price, of theater equipment.

General Theatres Equipment, Inc., is to be incorporated under the laws of the State of Delaware. It will have an authorized capital stock of 5,000,000 shares of common stock, all of which will be without par value. The proposed certificate of incorporation of General Theatres Equipment, Inc., is marked "Schedule A", and annexed hereto and made a part hereof. No changes in said certificate of incorporation will be made, prior to the delivery to you of the debentures to be purchased by you hereunder, without your consent.

The undersigned agrees: 1. To cause General Theatres Equipment, Inc., to be organized and incorporated as aforesaid;

2. To cause said General Theatres Equipment, Inc., when organized and incorporated as aforesaid, to issue $6,000,000 principal amount of debentures substantially in accordance with the terms and provisions set forth in schedule B hereof;

3. To deliver to said General Theatres Equipment, Inc., certificates for 550,800 fully paid and nonassessable shares of the common stock of said International Projector Corporation, now owned or controlled by the undersigned, duly endorsed in blank for transfer or accompanied by instruments in writing, duly authorizing the transfer thereof, or registered in the name of said General Theatres Equipment, Inc., and/or its nominee or nominees, in exchange for 688,500 shares of common stock of said General Theatres Equipment, Inc., to be issued pursuant to the terms, conditions, and provisions set forth in the proposed certificate of incorporation, schedule A hereof.

4. To deliver to said General Theatres Equipment, Inc., certificates for 294,421 fully paid and nonassessable shares of the common stock of said National Theater Supply Co., now owned or controlled by the undersigned, duly endorsed in blank for transfer or accompanied by instruments in writing, duly authorizing the transfer thereof, or registered in the name of said General Theatres Equipment, Inc., and/or its nominee or nominees, in exchange for 294,421 shares of common stock of said General Theatres Equipment, Inc., to be issued pursuant to the terms, conditions, and provisions set forth in the proposed certificate of incorporation, schedule A hereof.

5. To cause said General Theatres Equipment, Inc., to acquire 50 percent of the entire issued and outstanding capital stock of said Grandeur, Inc., at a cost of not to exceed $2,000,000.

6. To cause said General Theatres Equipment, Inc., to acquire the capital stock of Hall & Connolly, Inc., and the capital stocks of the corporations to be organized to acquire the property, business, and assets of the Strong Electric Co., J. E. McAuley Manufacturing Co., and Ashcraft Automatic Arc Co., as hereinabove set forth, at a cost of not to exceed $3,000,000.

7. To cause said General Theatres Equipment, Inc., to acquire all of the common stock of said Theatre Equipment Acceptance Corporation in exchange for 25,000 shares of the common stock of said General Theatres Equipment, Inc., and to retire all of the preferred stock of said Theatre Equipment Acceptance Corporation at an expenditure of not to exceed $540,000.

8. To furnish to you, without expense to you, an opinion of a responsible counsel (in a form satisfactory to your counsel) that the stocks of the above corporations to be acquired by General Theatres Equipment, Inc., shall all be fully paid and nonassessable and that the businesses and assets of the above corporations to be acquired by said General Theatres Equipment, Inc., shall be so acquired free and clear of liens and other encumbrances. Said responsible counsel may be Messrs. Matthews & Koegel.

Reference is hereby made to an agreement of even date between the undersigned and some of yourselves covering the purchase by some of yourselves from General Theatres Equipment, Inc., of 300,000 shares of its common stock without par value. Upon the completion of the purchase by you of the debentures, which are the subject of this agreement, and of the common stock, which is the

subject of the agreement referred to above in this paragraph, and the retirement of all the outstanding notes and preferred stock of National Theatre Supply Co. and all the outstanding preferred stock of International Projector Corporation and all the outstanding preferred stock of Theatre Equipment Acceptance Corporation, the undersigned represents to you that the pro forma balance sheet of General Theatres Equipment, Inc., attached hereto and marked "Schedule C", is a true statement of what the financial structure and condition of General Theatres Equipment, Inc., will then be.

The undersigned further represents that the balance sheet certified by F. W. Lafrentz & Co., marked "Schedule D", annexed hereto and made a part hereof, correctly reflects what will be the condition of said Grandeur, Inc., after its entire capital stock shall have been subscribed and paid for.

The undersigned hereby agrees to cause General Theatres Equipment, Inc., to make, as soon as practicable after the completion of the purchase by yourselves of said 300,000 shares of common stock of General Theatres Equipment, Inc., an offer for the purchase, at the call prices, of all the outstanding notes and preferred stock of the National Theater Supply Co., and all the outstanding preferred stock of International Projector Corporation, and all the outstanding preferred stock of Theater Equipment Acceptance Corporation. Said cash offer shall remain open at least until January 1, 1930, and during said period no alternative offer for the purchase of said stock and securities shall be made by General Theatres Equipment, Inc.

The said 300,000 shares of common stock will be sold at the price of $20 per share and the $6,000,000 realized by such sale shall be placed in escrow with the Chase National Bank of the City of New York under an escrow agreement, satisfactory to our respective counsel, for the purpose of retiring the outstanding preferred stocks of the Theatre Equipment Acceptance Corporation, National Theater Supply Co., and International Projector Corporation, and notes of the National Theatre Supply Co.

The undersigned further represents to you that the balance sheets of said Hall & Connolly, Inc., Theatre Equipment Acceptance Corporation, International Projector Corporation, National Theatre Supply Co., the Strong Electric Co., J. E. McAuley Manufacturing Co., (which will be furnished by July 15, 1929), Mitchell Camera Co., and Ashcraft Automatic Arc Co., (a copartnership), marked "Schedule E", annexed hereto and made a part hereof, correctly reflect the financial condition of the aforesaid corporations and copartnership, respectively, as of the respective dates of said balance sheets, and that no changes in financial condition of the aforesaid corporations and copartnership, or any of them, have occurred, except in the ordinary course of business since the respective dates thereof.

The undersigned further represents to you that the net profits, after depreciation but before taxes, from the business of said Hall & Connolly, Inc., Theater Equipment Acceptance Corporation, International Projector Corporation, National Theatre Supply Co., the Strong Electric Co., J. E. McAuley Manufacturing Co., Mitchell Camera Co., and Ashcraft Automatic Arc Co. (a copartnership) were respectively as set forth in the statement marked "Schedule F", annexed hereto and made a part hereof. The undersigned also represents to you that said net earnings, for the period from May 31, 1928, to May 31, 1929, have been not less than $2,200,000.

Subject to the correctness of all representations made by the undersigned herein, and to the performance by the undersigned of all agreements herein set forth to be performed by the undersigned, and subject to the approval of your counsel as to all legal matters pertaining to the transactions herein referred to, you agree to purchase or cause to be purchased from said General Theatres Equipment, Inc., and the undersigned agrees to cause said General Theatres Equipment, Inc., to sell to you, or to the purchasers designated by you $6,000,000 principal amount of debentures of General Theatres Equipment, Inc., substantially in accordance with the terms and provisions set forth in schedule B hereof, at the price of $90 per $100 principal amount thereof, plus accrued interest. Delivery of said debentures shall be made against payment therefor at the Chase National Bank, of the city of New York, at its office, 18 Pine Street, New York City, or at the office of Pynchon & Co., 111 Broadway, New York City, at your option, on August 1, 1929.

I agree that the certificates for 550,800 shares of common stock of International Projector Corporation and 294,421 shares of common stock of National Theatre Supply Co. now owned or controlled by me, and to be delivered by me

to said General Theatres Equipment, Inc., in exchange for shares of its common stock, as hereinabove set forth, shall be so delivered prior to the delivery to you of the $6,000,000 principal amount of debentures of General Theatres Equipment, Inc. Unless and until I shall have delivered to said General Theatres Equipment, Inc., certificates for said shares of common stock of International Projector Corporation and National Theatre Supply Co., as hereinabove set forth, you shall be under no obligation to accept delivery of and pay for said $6,000,000 principal amount of debentures.

The undersigned agrees to cause said General Theatres Equipment, Inc., at no expense to you, to use its best efforts to qualify said debentures under the so-called "blue-sky laws" of any State in which you may desire to offer said debentures for sale, and to that end to furnish all information and documents and to execute any and all papers which may be necessary or proper so to qualify the same.

The undersigned agrees to furnish you with the usual letter or letters to be attached to any circular which you may wish to use in connection with the offering of said debentures to the public—such letter or letters to contain such information regarding the affairs of said General Theatres Equipment, Inc., as shall mutually be deemed advisable and to be signed by its president.

The reasonable fees and disbursements of your counsel in connection with this transaction shall be paid by said General Theatres Equipment, Inc.

There shall be supplied to your counsel at no expense to you all documents reasonably requested by them in connection with their examination of any matters mentioned herein or arising hereunder.

The undersigned further represents to you that no agreements have been made for the issue by said General Theatres Equipment, Inc., of any of its bonds, debentures, notes, or other obligations in addition to the $6,000,000 principal amount of debentures to be purchased or caused to be purchased by you, as herein provided.

The undersigned agrees to cause said General Theatres Equipment, Inc., to make application, at its expense, to list said debentures on such stock exchange or exchanges as you may designate and at such time or times as you may designate.

The undersigned agrees to cause said General Theatres Equipment, Inc., to furnish you monthly earnings statements and quarterly balance sheets thereof as soon after the last day of each period as is reasonably practicable.

The undersigned agrees that he will cause said General Theatres Equipment, Inc., to have its books audited once a year by certified public accountants in good standing and to cause said General Theatres Equipment, Inc., to furnish you with certified copies of such audits as soon as is reasonable after the close of each fiscal year.

At the option of the undersigned any or all of the common stock of said General Theatres Equipment, Inc., may be deposited in a voting trust to be created by an agreement satisfactory to you and your counsel and to be construed according to the laws of the State of New York. In case any of the shares of common stock of said General Theatres Equipment, Inc., shall be deposited in such voting trust, voting trust certificates may be issued and delivered in lieu of, and as the equivalent of, certificates for such common stock under any of the provisions hereof.

The undersigned agrees that he will at any time at your request vote all shares of stock of said General Theatres Equipment, Inc., which he owns or controls, and which may not be represented by voting trust certificates, for the election of any five persons whom you may designate as directors of said General Theatres Equipment, Inc.

In the event that the said common stock is deposited in the voting trust as hereinabove provided, I agree to cause the voting trustees to be H. L. Clarke, Walter S. Hammons, and W. F. Ingold.

The undersigned agrees to cause said General Theatres Equipment, Inc., to enter an agreement with you that said General Theatres Equipment, Inc., will not issue any shares of its common stock in exchange for shares of common stock of the aforesaid corporations at rates exceeding one and one quarter shares of its common stock per share of common stock of International Projector Corporation and one share of its common stock per share of common stock of National Theatre Supply Co. without your consent.

The undersigned further agrees to cause said General Theatres Equipment, Inc., to give you so-called "preferential rights" with respect to the purchase of

any additional and future issues of its bonds, debentures, notes, or other obligations.

This instrument shall be construed according to the laws of the State of New York.

If the foregoing is in accordance with your understanding, please sign your acceptance in the space provided below.

Yours very truly,

H. L. Clarke,
By O. E. Koegel,
Attorney in fact.

Accepted:

Chase Securities Corporation, by Murray W. Dodge, vice president; Pynchon & Co., by W. F. Ingold, a partner; West & Co., by Charles B. Wiggin, a partner; W. S. Hammons & Co., by W. S. Hammons, president; Halsey, Stuart & Co., Inc., by E. W. Niver, vice president.

Schedule B

The debentures to be issued by General Theatres Equipment, Inc., are to be known as its "15-year 6-percent convertible gold debentures", and are to be issued under an indenture to be executed by said General Theatres Equipment, Inc., and the Chase National Bank of the City of New York, as trustee, which indenture shall contain, among others, the following terms and conditions:

1. The principal amount of debentures at any one time outstanding shall not exceed $6,000,000.

2. The debentures shall be dated as of July 1, 1929, and shall mature July 1, 1944.

3. Interest on the debentures at the rate of 6 percent per annum shall be payable semiannually, on the 1st day of January and the 1st day of July in each year, at the principal office of the Chase National Bank of the City of New York, and at the option of the holders thereof, at Continental Illinois Bank & Trust Co., in Chicago, Ill.

4. The debentures shall be convertible at the option of the holders thereof, at any time on and after January 1, 1930, into the common stock of said General Theatres Equipment, Inc., at the rate of $100 principal amount of debentures for three shares of such common stock, or, in case such common stock shall subsequently be reclassified or become exchangeable for, or convertible into, any other class or classes of stock, then into the equivalent of such three shares of common stock. In case of the declaration of any stock dividend, the debenture holder shall at the time of conversion be entitled to and receive the same or its equivalent as above provided. In case, while the debentures are outstanding, the company shall offer any stock to holders of its outstanding stock for subscription at a price less than $33⅓ per share, it shall cause notice of the offering to be published and the debenture holders shall have the right during the period allowed for subscriptions by other stockholders (but not less than 20 days after the first publication of such notice) to receive stock upon conversion of their debentures to such number of shares as will make the price thereof the same as that at which it is offered to holders of outstanding stock.

5. The debentures shall be redeemable at the option of said General Theatres Equipment, Inc., as a whole at any time after July 1, 1930, or in part from time to time after July 1, 1930, or any interest date, upon not less than 40 days' notice, at the rate of $110 per $100 principal amount of debentures, plus interest to date of redemption. Said General Theatres Equipment, Inc., may also purchase debentures for retirement and cancellation at any time or from time to time at a price or prices not exceeding the redemption price, plus interest to the date of purchase thereof.

6. In case the debentures or any of them shall be called for redemption the holders thereof may exercise the aforesaid right to convert the same into common stock up to and including the tenth day preceding the date of redemption.

7. Beginning July 1, 1933, a sinking fund will be established for the purpose of retiring the said debentures at the rate of $300,000 per year.

8. The company will covenant not to create or permit any lien upon its holdings of subsidiary companies or other assets without securing the debentures

at least equally, except that this shall not apply to loans maturing not more than 1 year after date secured by assets other than shares of common or other voting stock of subsidiary and controlled companies. The company will further covenant not to permit any subsidiary or controlled company to issue additional shares of common or other voting stock, unless all thereof, or at least the same proportion thereof as formerly owned, shall be acquired by the company or another subsidiary. The company will also covenant to furnish to the trustee annually financial statements, including balance sheets and earning statements of itself and its subsidiary and controlled companies.

9. The company will covenant to refund the following taxes:

(*a*) Pennsylvania personal property taxes not exceeding 4 mills per annum on each dollar of the taxable value or principal amount of such debenture;

(*b*) California personal property taxes not exceeding 5 mills per annum on each dollar of the taxable value or principal amount of such debenture;

(*c*) Connecticut personal property taxes not exceeding 4 mills per annum on each dollar taxable value or principal amount of such debenture;

(*d*) Maryland personal-property taxes not exceeding 4½ mills per annum on each dollar of the taxable value or principal amount of such debentures;

(*e*) Kentucky personal-property taxes not exceeding 5 mills per annum on each dollar of the taxable value or principal amount of such debenture;

(*f*) Massachusetts income taxes not exceeding 6 percent on the interest payable on such debenture;

(*g*) Maine personal-property taxes not exceeding 5 mills per annum on each dollar of the taxable value or principal amount of such debenture, and/or Maine income taxes not exceeding 6 percent per annum on the interest payable on such debenture, which may hereafter from time to time be imposed by the laws of said State; and

(*h*) New Hampshire income taxes not exceeding 3 percent per annum on the interest payable on such debenture.

Mr. PECORA. For the information of the subcommittee, I might say that I have read into the record the entire agreements with the exception of the schedules that were annexed thereto and made a part thereof.

The CHAIRMAN. Very well.

Mr. PECORA. Now, Mr. Clarke, I assume that this agreement of July 9, 1929, represents the conclusions that had been arrived at between you and the other parties to this agreement as the result of a series of conferences that were held prior to July 9?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Over how long a period of time were those conferences held that culminated in this agreement?

Mr. CLARKE. I would say several months, anyway.

Mr. PECORA. Then it took about 7 months——

Mr. CLARKE (interposing). No. I said a couple of months, or rather I used the term "several months."

Mr. PECORA. I thought you said 7 months.

Mr. CLARKE. No. I said several months.

Mr. PECORA. Then it took 2 or more months to hatch this proposition; is that right?

Mr. CLARKE. That is correct.

Mr. PECORA. In those conferences did you discuss the proposal with the gentlemen representing the various parties hereto, who signed the agreement in behalf of their respective parties? That is to say, with Mr. Murray W. Dodge in behalf of Chase Securities Corporation, and with Mr. William F. Ingold in behalf of Pynchon & Co., and with Mr. Charles Wiggin in behalf of West & Co., and with Mr. Hammons in behalf of W. S. Hammons & Co.

Mr. CLARKE. I discussed it with them, and others.

Mr. PECORA. And with others?

Mr. CLARKE. In their organizations; yes, sir.

The CHAIRMAN. Were those debentures issued that are mentioned in this agreement?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Practically all the terms and conditions embodied in this agreement marked "Committee Exhibit No. 133" were carried out, were they?

Mr. CLARKE. Yes; I would say practically so.

Mr. PECORA. Now, I notice that in this agreement provision was made for the formation of different corporations which were designed to take over the assets of the four so-called "lamp companies" that I questioned you about this morning. That is true, isn't it?

Mr. CLARKE. Yes.

Mr. PECORA. Now, some of those lamp companies were actually in the form of existing corporations, were they not?

Mr. CLARKE. That is correct.

Mr. PECORA. Prior to the making of this agreement?

Mr. CLARKE. That is right.

Mr. PECORA. Why were new corporations formed to take over those existing corporations in such cases?

Mr. CLARKE. I think, perhaps, in order to comply with the bulk sales law.

Mr. PECORA. And what were the features of the bulk sales law that you wanted to comply with essentially by that manner?

Mr. CLARKE. All of them, I assume.

Mr. PECORA. Well, what were they as you had them in mind?

Mr. CLARKE. Well, I cannot give you a digest of the bulk sales law. I know generally what it means, of course, but——

Mr. PECORA (interposing). Well, now, tell us in your own way.

Mr. CLARKE. The bulk sales law, as I understand it, is a law designed to prevent combinations of sales of competing companies in all States of the Union. Is that correct?

Mr. PECORA. Did a lawyer ever tell you that those were the salient features of the bulk sales law?

Mr. CLARKE. I told you I didn't know what they were.

Mr. PECORA. Aren't you now referring to the antimonopoly laws instead of the bulk sales law?

Mr. CLARKE. No; I am referring to section (c) of the Clayton Act. But, to be perfectly frank with you, I could not give you a good digest of the bulk sales law.

Mr. PECORA. You had in mind that there was something to be complied with with regard to the bulk sales law that made it necessary or advisable——

Mr. CLARKE (interposing). I say, perhaps.

Mr. PECORA (continuing). To organize new corporations to take over existing corporations.

Mr. CLARKE. I said, perhaps that was the reason.

Mr. PECORA. Now, can you tell this subcommittee at what price, or prices, those existing corporations or copartnerships that were engaged in the business of lamp manufacture, were taken over by the corporations that were organized especially under the terms of this agreement to take them over?

Mr. CLARKE. At the same prices that we paid the owners for them.

Mr. PECORA. You are sure of that, are you?

Mr. CLARKE. Yes; I feel quite sure of it, unless there was some organization expense, or were some items of that kind.

Mr. PECORA. And you are going to make a further search for the documents in connection with those matters?

Mr. CLARKE. I am going to give you an actual account of it.

Mr. PECORA. Now, the 550,800 shares of common stock of the International Projector Corporation which General Theatres Equipment, Inc., obligated itself to acquire under the terms of this agreement, were the shares that you then owned, weren't they?

Mr. CLARKE. That is correct.

Mr. PECORA. Which did not include shares owned by any of the other stockholders of the International Projector Corporation, did it?

Mr. CLARKE. No. I could not contract for any other stockholder.

Mr. PECORA. Now, the 294,421 shares of common stock of General Theatres Equipment, Inc., which under the terms of this agreement General Theatres Equipment was obligated to acquire in exchange for its own stock, were the shares of National Theatre Supply Co. which you then owned; is that right?

Mr. CLARKE. I believe so; yes, sir.

Mr. PECORA. Reference is made in this agreement to the acquisition of all the common stock of the Theatre Equipment Acceptance Corporation, in exchange for 25,000 shares of the common stock of General Theatres Equipment, Inc. Who owned the common stock of Theatre Equipment Acceptance Corporation referred to in this agreement?

Mr. CLARKE. Webster Securities Corporation.

Mr. PECORA. And who owned the Webster Securities Corporation?

Mr. CLARKE. I did.

Mr. PECORA. You did?

Mr. CLARKE. Yes, sir.

Mr. PECORA. How many shares of the Theater Equipment Acceptance Corporation did you own through the Webster Securities Corporation?

Mr. CLARKE. Five thousand.

Mr. PECORA. You owned 5,000 shares?

Mr. CLARKE. Yes, sir.

Mr. PECORA. What did they cost you?

Mr. CLARKE. It was $50,000.

Mr. PECORA. And in return for them you got 25,000 shares of the common stock of General Theaters Equipment, Inc?

Mr. CLARKE. That is correct.

Mr. PECORA. Which was the stock, or a part of the issue of stock that the bankers themselves agreed to pay $20 a share for under this agreement?

Mr. CLARKE. That is right.

Mr. PECORA. So, giving that valuation of $20 a share to those 25,000 shares, and assuming that that valuation represented a fair and reasonable value, you got the equivalent of $500,000 for stock of the Theater Equipment Acceptance Corporation which cost you $50,000; is that right?

Mr. CLARKE. That is correct.

Mr. PECORA. How long before July of 1929 did you put that $50,000 into the Theatre Equipment Acceptance Corporation?

Mr. CLARKE. I will find it. [Looking through some papers.]

Mr. PECORA. Well, tell us approximately if you cannot tell us exactly.

Mr. CLARKE. I think we have it. I will try to get it for you in a minute.

Mr. PECORA. All right. [After a pause.] It was about 2 years before, wasn't it?

Mr. CLARKE. It was about September of 1927.

Mr. PECORA. September of 1927, a little less than 2 years before.

Mr. CLARKE. Yes, sir.

Mr. PECORA. And as to that Theater Equipment Acceptance Corporation, it was a corporation which you caused to be organized, wasn't it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And its business consisted of extending credit to purchasers or customers of the National Theatre Supply Co. and the other companies that you had caused to be organized; is that right?

Mr. CLARKE. That is correct.

Mr. PECORA. Now, there is a provision contained in this agreement, which has been marked "Committee Exhibit No. 133", for the retirement by purchase by General Theatres Equipment, Inc., of all the outstanding notes and preferred stock of both the National Theatre Supply Co. and the International Projector Corporation, as well as all of the outstanding preferred stock of Theater Equipment Acceptance Corporation; do you recall that?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Who held the preferred stock and notes outstanding of the National Theatre Supply Co. on July 9, 1929?

Mr. CLARKE. I can tell you what I had in just a moment [looking over some papers].

Mr. PECORA. All right.

Mr. CLARKE. I held 2,376 shares of preferred——

Mr. PECORA (interposing). A little louder, please.

Mr. CLARKE. I held 2,376 shares of the preferred out of a total of 20,000 shares issued.

Mr. PECORA. In which corporation, now?

Mr. CLARKE. In the National Theatre Supply Co.

Mr. PECORA. Who held the balance?

Mr. CLARKE. I don't know. I haven't a list of it.

Mr. PECORA. Did the bankers or any of them hold them?

Mr. CLARKE. Well, the bankers purchased, as you will recall, and——

Mr. PECORA (interposing). Were the bankers, then, the holders of the other outstanding preferred shares?

Mr. CLARKE. Well, I think the public held the most of the shares.

Mr. PECORA. Now——

Mr. CLARKE (continuing). I am getting you this International data——

Mr. PECORA (interposing). Well, I am asking you now about the National Theatre Supply Co. preferred stock.

Mr. CLARKE. All right.

Mr. PECORA. The callable price of that stock was 107½, wasn't it?

Mr. CLARKE. That is correct.

Mr. PECORA. And that is what you received under the terms of this agreement, for your portion of the preferred stock of National Theatre Supply Co.?

Mr. CLARKE. I did not sell it to the company.

Mr. PECORA. What was that answer?

Mr. CLARKE. I did not sell it direct to the company. That was the stock that I sold. That 3-3 purchase account, we had that, which I think we called a trading account, but it really wasn't so, but was a purchase account.

Mr. PECORA. Who were the two other parties to it?

Mr. CLARKE. Mr. Murray W. Dodge and Mr. William F. Ingold.

Mr. PECORA. In their individual rights or in their representative capacities?

Mr. CLARKE. In their individual rights, I think.

Mr. PECORA. I want you to have available when I call for it some time tomorrow the terms of that 3-3 account.

Mr. CLARKE. We haven't got it.

Mr. PECORA. Have you a copy of it, Mr. Dodge? [No response.]

Mr. CLARKE. I know what happened, though, in the account, and what stock was purchased, and can tell you that now.

Mr. PECORA. I want to know, Mr. Clarke, and I thought you were telling me when you answered my question to that effect before; I want to know now who were the holders of the preferred stock of the National Theatre Supply Co. on July 9, 1929, when this agreement, marked "Committee Exhibit No. 133", was entered into. When I asked you that question before you said you owned 2,376 shares.

Mr. CLARKE. That is correct.

Mr. PECORA. Is that correct?

Mr. CLARKE. Yes.

Mr. PECORA. I thought you said it was in a 3-3 account.

Mr. CLARKE. I did. And you asked what I got in exchange, and I told you I sold it to this account.

Mr. PECORA. Prior to July 9?

Mr. CLARKE. No; I think afterwards, but I don't know the date.

Mr. PECORA. Have you been able yet from your documents——

Mr. CLARKE (interposing). Just a moment, and perhaps we can find it here.

Mr. PECORA. Very well.

Mr. CLARKE. According to our records it was turned over to this account September 18, 1929.

Mr. PECORA. Now, General Theatres Equipment, Inc., actually retired that stock by purchase at the call price, didn't it? That is, it bought it or purchased it at 107½?

Mr. CLARKE. That is right, all of it.

Mr. PECORA. Now, on July 9, 1929, when the agreement in question was entered into which provided that such purchase be made, what was the market quotation for that preferred stock of the National Theatre Supply Co.?

Mr. CLARKE. I don't know.

Mr. PECORA. Was the stock listed on any public exchange at that time?

Mr. CLARKE. I don't know, but I don't think it was.

Mr. PECORA. My information, Mr. Clarke, is to the effect substantially that during the months of June and July 1929 the preferred stock of the National Theatre Supply Co. was quoted within the following ranges: June, 79 bid, 90 asked; July, 71 bid, 81 asked. Does that accord with your recollection, substantially?

Mr. CLARKE. I do not recall that it was listed, Mr. Pecora. It may have been.

Mr. PECORA. Whether it was listed or not, it was dealt in over the counter, was it not?

Mr. CLARKE. Oh, yes; I suppose so.

Mr. PECORA. Then these quotations would be the quotations in the over-the-counter market?

Mr. CLARKE. If you received those quotations from somewhere, I do not doubt it; but I do not know what the price was.

Mr. PECORA. You do know this, that there were no public quotations for the stock at anything like 107½ at any time during the month of July 1929 or during the month of June 1929?

Mr. CLARKE. I imagine not. I do not know.

Mr. PECORA. Mr. Clarke, I notice on the face of the contract of July 9, 1929, which has been marked in evidence as "Exhibit No. 133", that at various places in the contract containing provisions for the purchase of the outstanding preferred stocks and notes or bonds of the National Theatre Supply Co., the International Projector Corporation, and the Theatre Equipment Acceptance Corporation, as the agreement was originally drawn the provision was for the retirement of those securities rather than the purchase of them by the General Theatres Equipment, Inc.; and I observe that the typewritten word "retirement" in those places where it occurs in this agreement is deleted by the drawing of a pen line through the word and the insertion of the word "purchase", in handwriting, over the word "retirement." Do you recognize the handwriting of those changes [handing paper to the witness]?

Mr. CLARKE. It looks bad enough to be mine.

Mr. PECORA. It looks like your handwriting?

Mr. CLARKE. No; I did not say that. I said it looks bad enough to be mine. [After examining paper with reading glass.] No; it is too good. It is not mine; it is not my handwriting.

Mr. PECORA. It is not?

Mr. CLARKE. It is not; no.

Mr. PECORA. Do you know whose handwriting that is?

Mr. CLARKE. I do not.

Mr. PECORA. Why was the change made from the original intention of retiring those securities to the purchasing of them by the General Theatres Equipment Co.?

Mr. CLARKE. I do not know.

Mr. PECORA. What?

Mr. CLARKE. I do not know.

Mr. PECORA. There is a difference between the retirement of them and the purchase of them, is there not?

Mr. CLARKE. Yes; I would say so.

Mr. PECORA. Don't you know why that change was made? You were 1 of the 2 sets of contracting parties to this agreement, remember.

Mr. CLARKE. I say I do not recall. I probably knew at the time.

Mr. PECORA. Can you conceive of the reason for that change?

Mr. CLARKE. If the words were "purchase and call", I would see a reason for it; but I do not see any reason for it. I do not see any particular difference between the two words "retirement" and "purchase." Retirement might mean the calling of them; I don't know.

Mr. PECORA. If they are retired, they cannot be issued again or used as collateral or sold.

Mr. CLARKE. That is right.

Mr. PECORA. And if they are merely purchased they would be available for use either as collateral or for selling purposes, would they not?

Mr. CLARKE. Yes, of course.

Mr. PECORA. That is a substantial difference between the two then, is it not?

Mr. CLARKE. If they were retired, they would be canceled.

Mr. PECORA. Exactly. But if they were purchased, they would not have to be canceled; so they could be used as collateral or they could be resold?

Mr. CLARKE. That is true.

Mr. PECORA. That is a substantial difference, is it not?

Mr. CLARKE. Yes.

Mr. PECORA. A moment ago you said you could not see any reason for it.

Mr. CLARKE. You have called my attention to that difference, and I see it.

Mr. PECORA. Was it necessary for me to call your attention to that difference before you were made aware of it?

Mr. CLARKE. Apparently.

Mr. PECORA. Despite all the experience you have had in the organization of corporations and the issuing and selling and marketing of securities?

Mr. CLARKE. You asked previously three times why the change was made, and I told you I did not know, and I do not know now.

Mr. PECORA. Yes; but then you volunteered the statement yourself that there was no difference between a plan to purchase and a plan to retire those securities. Now you acknowledge there is a substantial difference.

This contract of July 9, 1929, also provides, in substance, that the moneys that were to be paid to the General Theatres Equipment by the bankers for the 6 million dollars principal amount of debentures were to be held in escrow or, rather, that portion thereof was to be held in escrow as would be necessary to purchase or retire these other securities of the other corporation. Was that escrow agreement carried out?

Mr. CLARKE. I think so.

Mr. PECORA. Have you a copy of that escrow agreement?

Mr. CLARKE. No; I have not.

Mr. PECORA. Who owned, on July 9, 1929, the outstanding notes, the 5-year 6½-percent gold notes of the National Theatre Supply Co.?

Mr. CLARKE. I do not know.

Mr. PECORA. That, according to this contract, exhibit no. 133, were to be purchased or retired by the General Theatre Equipment?

Mr. CLARKE. We have no information as to who owned them.

Mr. PECORA. To whom were they issued originally?

Mr. CLARKE. They were sold to the bankers.

Mr. PECORA. Did the bankers still own them when this agreement of July 9, 1929, was entered into?

Mr. CLARKE. I do not believe they did.

Mr. PECORA. Who do you believe did own them at that time?

Mr. CLARKE. I have no notion of it.

Mr. PECORA. Under this contract of July 9, 1929, those notes were callable at 105, were they not?

Mr. CLARKE. Yes; they were callable at 105.

Mr. PECORA. What were they sold for when originally issued by the National Theatre Supply Co.?

Mr. CLARKE. Those debentures were sold at 90.

Mr. PECORA. At what?

Mr. CLARKE. They were sold at 90.

Mr. PECORA. Do you know when they were issued and sold?

Mr. CLARKE. In September 1926.

Mr. PECORA. And they were 6½-percent notes, were they not?

Mr. CLARKE. Yes; that is correct.

Mr. PECORA. And 3 years later they were called at 105?

Mr. CLARKE. That is correct. They were purchased or called, whatever the term is.

Mr. PECORA. They were purchased at the callable price of 105, to put it exactly. Who owned the outstanding preferred stock of the International Projector Corporation on July 9, 1929? As I recall it, there were 25,000 shares of such preferred stock issued and outstanding.

Mr. CLARKE. I owned 2,107 of those shares.

Mr. PECORA. Who owned the balance?

Mr. CLARKE. I do not know.

Mr. PECORA. The bankers?

Mr. CLARKE. No; I should think the public owned them.

The CHAIRMAN. What rate of interest did the debentures bear?

Mr. CLARKE. Six percent.

The CHAIRMAN. They were sold to the public?

Mr. CLARKE. The debentures?

The CHAIRMAN. Yes.

Mr. CLARKE. Yes, sir.

Mr. PECORA. The Senator asked you about the debentures. I am asking you about the preferred stock.

Mr. CLARKE. Yes.

Mr. PECORA. Have you no way of finding out who were the owners, of the balance of the 25,000 shares of the International Projector Co.'s preferred stock on July 9, 1929?

Mr. CLARKE. One would have to go to the company's records for that.

Mr. PECORA. Do you know what the public quotation was for the preferred stock of the International Projector Corporation on July 9, 1929?

Mr. CLARKE. No, sir; I do not.

Mr. PECORA. Was the stock listed on any public exchange at that time?

Mr. CLARKE. I do not think it was.

Mr. PECORA. It was traded in in the over-the-counter market?

Mr. CLARKE. Yes; it would have to be.

Mr. PECORA. My information is that early in July 1929 that preferred stock was quoted at 95 bid and 100 asked. Does that accord with your recollection?

Mr. CLARKE. In July 1929?

Mr. PECORA. Yes.

Mr. CLARKE. It was undoubtedly much higher at that time than it was 2 years previously.

Mr. PECORA. Would you say that my information is substantially correct about the bid and asked quotations for the preferred stock of International Projector?

Mr. CLARKE. I assume you have it from some place; yes, sir.

Mr. PECORA. You have already told us you owned all of the outstanding stock of the Theater Equipment Acceptance Corporation—the common stock?

Mr. CLARKE. That is correct.

Mr. PECORA. Who owned the 3,000 shares of the Theater Equipment Acceptance Corporation's first preferred stock on July 9, 1929?

Mr. CLARKE. I don't know who owned it.

Mr. PECORA. That preferred stock was callable at 110, was it not?

Mr. CLARKE. I do not know. I will find out. [After conferring with associate.] Yes; it was callable at 110.

Mr. PECORA. And the General Theatres Equipment Co., under this contract of July 9, 1929, or in pursuance of its provisions, actually acquired that preferred stock at 110, the callable price, did it not?

Mr. CLARKE. Yes; it did.

Mr. PECORA. Do you know for what price the Theater Acceptance Corporation had issued that preferred stock?

Mr. CLARKE. My impression is it was issued for par, because of the sale being equal to par——

Mr. PECORA. Was it not actually issued at $90?

Mr. CLARKE. I do not think so. But I am not saying it was issued at par. My impression is that it was.

Mr. PECORA. Don't you remember to whom those 3,000 shares of preferred stock were originally issued?

Mr. CLARKE. I am sorry, but I do not.

Mr. PECORA. Was it not issued to Hammons & Co., one of the members of this banking syndicate?

Mr. CLARKE. It may have been.

Mr. PECORA. Was it not issued to them at 90 instead of at par?

Mr. CLARKE. In the absence of any record here I cannot tell you

Mr. PECORA. Is it not a fact that Hammons & Co. at the time the General Theatre Equipment Co. purchased that preferred stock of the Theater Equipment Acceptance Corporation at 115, owned all but 70 of the 3,000 shares?

Mr. CLARKE. I do not know; otherwise I would have answered the other question.

Mr. PECORA. Would not the records of the General Theatre Equipment Co. show that, whether or not it is a fact?

Mr. CLARKE. I suppose they would; but I must call your attention to the fact that I have not those records and I am only telling you what I know.

Mr. PECORA. This agreement of July 9, 1929, further provides for the purchase of 50 percent of the capital stock of the corporation called Grandeur, Inc.?

Mr. CLARKE. Yes, sir.

Mr. PECORA. The total outstanding capital stock consisted of 100,000 shares, did it not?

Mr. CLARKE. I believe that is correct

Mr. PECORA. Who owned the 50,000 shares which were taken over by General Theaters Equipment, Inc.?

Mr. CLARKE. Grandeur was organized at the same time for the purpose of taking over the Mitchell Camera. It was simply organized for the purpose of taking over that camera company, and in which Mr. Fox had a half interest, and later it was purchased——

Mr. PECORA. I did not hear that.

Mr. CLARKE. I say the company was organized for the purpose of taking over the Mitchell Camera Co., or the half interest in the Mitchell Camera Co. And Mr. Fox's interest in that was a half interest, and he was paid for his half interest. I do not believe anybody held the stock or paid anything for that stock other than just the corporation was formed to take over the Mitchell Camera.

Mr. PECORA. Well, now, let us see. Grandeur, Inc., was organized solely for the purpose of taking over the assets of the Mitchell Camera Co., which was an existing corporation?

Mr. CLARKE. That is right.

Mr. PECORA. And it did so take over the assets of the Mitchell Camera Corporation, did it not?

Mr. CLARKE. Yes.

Mr. PECORA. And how did it pay for those assets? In cash or by an exchange of stock?

Mr. CLARKE. It paid in cash, because it paid out $1,475,000 for one half interest, but it paid to Mr. Fox 2 million dollars for one half of the Grandeur stock.

Mr. PECORA. That does not answer.

Mr. CLARKE. $2,000,000 was paid to Mr. Fox by myself.

Mr. PECORA. To whom?

Mr. CLARKE. Mr. Fox.

Mr. PECORA. By whom?

Mr. CLARKE. By myself. Of course it was out of this financing, but I handled the transaction.

Mr. Pecora. Now let us see. Who owned the Mitchell Camera Corporation at the time it was taken over by the Grandeur, Inc.?

Mr. Clarke. I owned it as an intermediary as I had owned these lamp companies.

Mr. Pecora. You owned it as an intermediary?

Mr. Clarke. Yes.

Mr. Pecora. As an intermediary for whom?

Mr. Clarke. For the General Theatres. I bought these companies and I turned them over at the price that I acquired them.

Mr. Pecora. Now wait. You first acquired all of the assets of the Mitchell Camera Co., and then turned those assets over to Grandeur, Inc.?

Mr. Clarke. That is right.

Mr. Pecora. And Grandeur, Inc., was organized for the express purpose of taking over those assets?

Mr. Clarke. That is right. And Grandeur patents and so forth.

Mr. Pecora. Yes. Well, they were all included in the assets of the Mitchell Camera Co., were they not?

Mr. Clarke. No; they were not. Mr. Fox had an ownership there.

Mr. Pecora. Did Mr. Fox have any interest in the Mitchell Camera Corporation before you commenced to acquire its stock for the purpose of transferring its assets to the Grandeur, Inc.?

Mr. Clarke. No. He had a contractual relation with them for the manufacture of cameras.

Mr. Pecora. How much did you actually pay either in behalf of yourself or the person or persons or interest for whom you made the purchase for the stock of the Mitchell Camera Corporation?

Mr. Clarke. $1,475,000.

Mr. Pecora. $1,475,000?

Mr. Clarke. Yes.

Mr. Pecora. What was the capitalization of Grandeur, Inc., at the time it took over all of the assets of the Mitchell Camera Corporation which you meanwhile had acquired as an intermediary?

Mr. Clarke. I think it was just 100,000 shares of common stock.

Mr. Pecora. Of no par value?

Mr. Clarke. I think so. I do not know.

Mr. Pecora. Now, for 50 percent of that stock General Theaters Equipment, Inc., paid $2,000,000 under the provisions of this contract of July 9, 1929, did it not?

Mr. Clarke. It did.

Mr. Pecora. That was more than you had paid for all of the assets of the Mitchell Camera Corporation?

Mr. Clarke. That is correct.

Mr. Pecora. Let me show you photostatic reproduction of what purports to be a balance sheet of the Mitchell Camera Corporation as of December 31, 1928. Will you look at it and tell us if you recognize it to be a true and correct copy of such balance sheet?

Mr. Clarke. This states that this is the balance sheet of the Mitchell Camera Corporation as of December 31, 1928. You asked me if I recall having seen this before?

Mr. PECORA. Do you know it to be a true and correct copy of such balance sheet?

Mr. CLARKE. No; I do not.

Mr. PECORA. Did you ever see it before?

Mr. CLARKE. No; I do not recall that I did. But I have seen balance sheets of the Mitchell Camera.

Mr. PECORA. When you bought for $1,475,000 the assets of the Mitchell Camera Corporation did you do it without making any inquiry as to its financial condition?

Mr. CLARKE. Most certainly not.

Mr. PECORA. Well, in connection with any inquiry that you made for that purpose; that is, for the purpose of enabling you to determine what would be a fair price to pay for those assets, did you among other things ask for a balance sheet?

Mr. CLARKE. Most certainly.

Mr. PECORA. As of the last fiscal year?

Mr. CLARKE. Certainly.

Mr. PECORA. You did?

Mr. CLARKE. Certainly.

Mr. PECORA. Well, is this the balance sheet that you saw?

Mr. CLARKE. I do not know.

Mr. PECORA. Or one like it?

Mr. CLARKE. I do not recall. I assume that these contracts will show a balance sheet attached to them as exhibits.

Mr. PECORA. Well, for the time being I am going to suspend with you.

Mr. Dodge, will you be good enough to look at this photostatic copy of what purports to be a balance sheet of the Mitchell Camera Corporation as of December 31, 1928, and which photostatic copy was furnished to us by the Chase Corporation. Tell us if you know it to be a true and correct copy of such balance sheet [handing same to Mr. Dodge].

Mr. MURRAY W. DODGE (after examining same). I assume it is, if it was taken from the Chase Corporation's files, Mr. Pecora. I do not recall it.

Mr. PECORA. Does it not bear upon its face every evidence that it came from the files of the Chase Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. You do not doubt the authenticity of this photostatic copy, do you, Mr. Dodge?

Mr. DODGE. No. I do not see that it is certified.

Mr. PECORA. Well, whatever it is——

Mr. DODGE. It is a copy of a balance sheet. How the Chase Securities Corporation got it or where from I do not know.

Mr. PECORA. Well, I am going to offer it in evidence for what it is worth.

The CHAIRMAN. Let it be admitted and entered on the record.

(Mitchell Camera Corporation balance sheet as at Dec. 31, 1928, was received in evidence marked "Committee Exhibit No. 134, of Nov. 16, 1933," and is here printed in the record in full as follows:)

Mitchell Camera Corporation—Balance sheet as at Dec. 31, 1928

ASSETS

Current assets:			
Cash:			
In Bank		$56,258.10	
In office		12.89	
Accounts receivable		93,241.52	
Inventory, materials and work in process, estimated		42,332.00	
			$191,844.51
Fixed assets:			
Land		18,059.39	
Machinery and tools	$72,422.23		
Less reserve for depreciation	9,548.67		
		62,873.56	
Furniture and fixtures	1,533.50		
Less reserve for depreciation	314.43		
		1,219.07	
Patents	89,082.21		
Less reserve for depreciation	31,440.78		
		57,641.43	
			139,793.45
Deferred charges:			
Unexpired insurance			322.29
Total assets			331,960.25

LIABILITIES

Current liabilities:		
Accounts payable	$967.59	
Accrued pay roll	512.16	
		1,479.75
Capital stock		100,000.00
Surplus		230,480.50
Total liabilities and capital		331,960.25

Mr. PECORA. The exhibit marked "Committee Exhibit No. 134" in evidence shows as of December 31, 1928, total assets of $331,960.25. At how much did you say you sold to the Grandeur, Inc., the stock of the Mitchell Camera Corporation which you say you bought for $1,475,000?

Mr. CLARKE. How much of it did I sell? How much of it? All of it.

Mr. PECORA. How much did you sell it for to the Grandeur Co.?

Mr. CLARKE. Well, for $1,475,000.

Mr. PECORA. Did you furnish us with this photostatic copy of statement of figures and data [handing same to Mr. Clarke]?

Mr. CLARKE (after examining same). Yes; that is right.

Mr. PECORA. And you furnished that to us as a true and correct statement of the matters that it relates to, did you not?

Mr. CLARKE. Yes; as far as our records went.

Mr. PECORA. I offer it in evidence and ask to have it spread upon the record.

The CHAIRMAN. It may be received and entered on the record.

(Statement concerning International Projector Corporation, National Theater Supply Co., Theater Equipment Acceptance Corporation, Lamp Companies and Grandeur, General Theatres Equipment, Inc., Fox Purchase, Fox Financing, Summary Chase loans was received in evidence, marked "Committee Exhibit No. 135, of Nov. 15, 1933", and is printed in the record in full on page 3438.

Mr. PECORA. This document has been marked "Committee Exhibit No. 135." I want to call your attention to page 2 thereof, which under the caption "Lamp Companies and Grandeur" says as follows:

August 1929 Grandeur bought from H. L. Clarke stock of Mitchell Camera for $3,100,000 cash.

Do you see that?

Mr. CLARKE. Yes; I see that.

Mr. PECORA. Is that a true statement?

Mr. CLARKE. Yes.

Mr. PECORA. Why did you tell us just a moment or two ago that you sold the stock of the Mitchell Camera Corporation to the Grandeur for the same price which you paid for that stock, namely, $1,475,000?

Mr. CLARKE. It is detailed down below to show how it happened: how it was done. We had to pay Mr. Fox $2,000,000 for his interest in the Grandeur.

Mr. PECORA. You had to pay him what?

Mr. CLARKE. $2,000,000.

Mr. PECORA. Well, does that not bring the total cost of Grandeur up to $6,100,000?

Mr. CLARKE. No. It would bring the total cost of Grandeur, including the Mitchell Camera, up to $3,475,000.

Mr. PECORA. How much?

Mr. CLARKE. $3,475,000.

Mr. PECORA. How do you get that figure?

Mr. CLARKE. By adding the 2 million dollars and the $1,475,000.

Mr. PECORA. Well, what did you mean by the statement which I read from this exhibit, and which reads as follows:

August 1929, Grandeur bought from H. L. Clarke stock of Mitchell Camera for $3,100,000 cash.

Mr. CLARKE. Well, I meant just what I said. And then the detail of it is just the way the transaction was handled, as shown completely below.

Mr. PECORA. I wish you would make an analysis for the benefit of this committee of that portion of exhibit no. 135 which appears on page 2 under the caption of "Lamp Companies and Grandeur."

Mr. CLARKE. Well, what analysis do you wish me to make?

Mr. PECORA. I want such an analysis as will intelligently give this committee knowledge of how those lamp companies were acquired and turned over to Grandeur. The prices, and so forth.

Mr. CLARKE. The lamp companies were not turned over to Grandeur. Just the Mitchell Camera Corporation.

The CHAIRMAN. The Camera Corporation and some Fox interest?

Mr. CLARKE. That is correct.

The CHAIRMAN. What the Fox interest was does not appear?

Mr. CLARKE. I do not believe I can give you any more complete detail than this.

Mr. PECORA. Well, now, I will go over this in detail with you. You have before you, have you not, a copy of committee's exhibit no. 135?

Mr. CLARKE. I have this.

Mr. PECORA. Yes. Now turn to page 2 thereof. Do you see toward the bottom of the page the caption "Lamp Companies and Grandeur"?

Mr. CLARKE. Surely.

Mr. PECORA. What did you intend to refer to under that caption of "Lamp Companies and Grandeur"?

Mr. CLARKE. Just exactly what it says and what follows.

Mr. PECORA. Well now, what follows is this:

> August 1929. GTE—

Which relates to the General Theatres Equipment—

> bought from H. L. Clarke all stock of McAuley, Strong Electric, Ashcraft, and Hall & Connolly for $3,000,000 cash.
>
> August 1929. Grandeur bought from H. L. Clarke stock of Mitchell Camera for $3,100,000 cash.

That makes a total of $6,100,000 cash, does it not?

Mr. CLARKE. Yes.

Mr. PECORA. That you received from the General Theatres Equipment for the stock of the McAuley Co., the Strong Electric Co., the Ashcraft Co., Hall & Connolly, Inc., and the Mitchell Camera Corporation; is that correct?

Mr. CLARKE. Right.

Mr. PECORA. Now the cost to you, according to this exhibit 135, of those assets of those five companies or units, and the disposition by you of the $6,100,000 that you received for them, is set forth in this exhibit 135 as follows:

Purchase price of assets

J. E. McAuley Manufacturing Co.	$1, 131, 422. 93
Strong Electric Co.	316, 000. 00
Ashcraft Automatic Arc Co.	150, 000. 00
Hall & Connolly, Inc.	160, 000. 00
Mitchell Camera Co.	1, 475, 000. 00

Making an aggregate, as appears on exhibit no. 135, for those five items, of $3,232,422.93.

Mr. CLARKE. Yes.

Mr. PECORA. Now, according to exhibit 135, you paid William Fox on August 1, 1929, the sum of $2,000,000 to be used for the purchase of half of Grandeur stock, is that right?

Mr. CLARKE. That is right.

Mr. PECORA. You also gave William Fox, according to this exhibit 135, 25,000 shares of General Theatres Equipment at 30, with repurchase agreement which you list here at $750,000?

Mr. CLARKE. Well, it was repurchased at $750,000.

Mr. PECORA. Was it repurchased?

Mr. CLARKE. Correct.

Mr. PECORA. By whom?

Mr. CLARKE. By me. Cash payment.

Mr. PECORA. There is also listed here commissions paid by you to H. E. Van Duyne of $100,000.

Mr. CLARKE. Yes, sir.

Mr. PECORA. Interest paid by you to the lamp companies, $14,627.58. Is that right?

Mr. CLARKE. Right.

Mr. PECORA. Expenses incidental to acquisition, $2,949.49.

Mr. CLARKE. Yes.

Mr. PECORA. That makes a total of $6,100,000 that you received in cash from General Theaters Equipment in connection with that corporation's acquisition of the assets of those five lamp companies?

Mr. CLARKE. And a half of Grandeur of this stock.

Mr. PECORA. Now which half of the Grandeur stock was sold to the General Theatres Equipment? The half owned by Mr. William Fox or the half not owned by him?

Mr. CLARKE. The half not owned by William Fox.

Mr. PECORA. How?

Mr. CLARKE. He still held his half.

Mr. PECORA. Well now, in this statement, exhibit 135, you say "Paid William Fox August 1, 1929, to be used for purchase of half of Grandeur stock $2,000,000."

Mr. CLARKE. That is right.

Mr. PECORA. What did that payment represent?

Mr. CLARKE. Exactly what it says.

Mr. PECORA. Well, what did it represent?

Mr. CLARKE. It represents payment for the half interest in Grandeur.

Mr. PECORA. You caused the Grandeur Co. to be organized, did you not?

Mr. CLARKE. I provided him with the funds.

Mr. PECORA. You caused it to be organized, did you not?

Mr. CLARKE. Yes; I would say so.

Mr. PECORA. Yes. All right. Now, you said before that you caused it to be organized specifically to take over the assets of the Mitchell Camera Corporation; is that right?

Mr. CLARKE. And to operate the Grandeur machines, and so forth. We did not pay that $2,000,000 to Mr. Fox just for fun, you know.

Mr. PECORA. Now, answer one question at a time, will you?

Mr. CLARKE. Yes.

Mr. PECORA. Do you remember saying a few minutes ago that the Grandeur Co. was organized to acquire the assets of the Mitchell Camera Corporation?

Mr. CLARKE. I did.

Mr. PECORA. All right. Now, you acquired as an intermediary for the Grandeur the assets of the Mitchell Camera Corporation, and you told us you paid for those assets $1,475,000; now, is that correct?

Mr. CLARKE. Yes.

Mr. PECORA. You also say that the Grandeur bought from you the stock of the Mitchell Camera Corporation for $3,100,000 cash?

Mr. CLARKE. Well, that is correct.

Mr. PECORA. And you also say that the Grandeur, or the General Theatres Equipment, in paying that $3,100,000 cash to you for the stock of the Mitchell Camera Corporation paid what that stock had cost you?

Mr. CLARKE. Yes; I do.

Mr. PECORA. Well, I wish you would reconcile all those statements If, as a matter of fact——

Mr. CLARKE. Well, if you——

Mr. PECORA. Wait a minute. If, as a matter of fact, the stock of the Mitchell Camera Corporation cost you $1,475,000, and you turned that stock over to the Grandeur Company for that same price, and then the General Theaters Equipment Co. bought the assets, the stock of the Mitchell Camera Corporation for $3,100,000 cash, please explain to my dense mind how it is that when you got $3,100,000 cash for the stock of the Mitchell Camera Corporation, which cost you $1,475,000, you received only what that stock cost you.

Mr. CLARKE. Mr. Pecora, I received a total of $6,100,000 from this financing with which to clear these transactions which are set forth, which you read in detail. The total of these transactions is also $6,100,000. I do not know how I can make it any plainer.

Mr. PECORA. Do you think you have made it clear?

Mr. CLARKE. Perhaps not, but it is set forth in detail there. You read it out and it totals $6,100,000.

Mr. PECORA. Well, do you think that it clearly appears in detail on exhibit no. 135 which was prepared by you as a true and correct statement?

Mr. CLARKE. Mr. Pecora. Mr. Keller would like to come over and talk to you.

Mr. KELLER. May I explain this to you off the record?

Mr. PECORA. Yes.

(Thereupon there was some little discussion off the record.)

Mr. PECORA. Mr. Chairman, I think it is about time to take a recess now, anyhow.

The CHAIRMAN. The subcommittee will stand in recess until 10:15 o'clock tomorrow morning.

(Thereupon, at 4:25 p.m., Thursday, Nov. 16, 1933, and adjournment was taken until 10:15 o'clock the next day, Friday, Nov. 17, 1933.)

(Committee Exhibit No. 135 of Nov. 16, 1933, is here printed in the record in full as follows:)

COMMITTEE EXHIBIT NO. 135, NOVEMBER 16, 1933

International Projector Corporation

September 17, 1925, organized as Cine Machinery Corporation.

November 23, 1925, name changed to International Projector Corporation.

Authorized capital: $7 dividend preferred stock, 50,000 shares; common stock, 200,000 shares.

November 23, 1925, sold to Pynchon, West, Shermar & Hammons for $2,250,000: Preferred stock, 25,000 shares; common stock, 75,000 shares (price 90 for preferred, common as bonus).

December 1, 1925, bankers offered allotment certificates one share preferred and one share common for $100 plus accrued dividends on preferred.

Common stock was disposed of as follows:

To H. L. Clarke for net assets of Acme Motion Picture Projector Co. ...shares	150,000
Less: Stock donated back to International by H. L. Clarke ...do	25,000
	125,000
Sold to bankers (with 25,000 shares preferred for $2,250,000, as stated above) ...shares	75,000
Total authorized ...do	200,000

Proceeds of $2,250,000 used as follows:

Acme Motion Picture Projector Co.:		
Purchase of Acme Motion Picture Projector Co. bonds		$171,331.67
Payment of liabilities of Acme Motion Picture Projector Co.		197,000.00
Nicholas Power Co., Inc.:		
Paid to S. R. Burns (acting as agent) for assets of Nicholas Power Co.		$690,777.78
Precision Machine Co., Inc.:		
Purchase of assets from stockholders of Precision Machine Co.:		
James A. Stillman	$200,000	
Adrian H. Larkin	200,000	
H. L. Clarke (for Precision stock acquired by him)	200,000	
		$600,000.00
Paid to H. L. Clarke (expended by him for property of Cinema Building Corporation)		225,700.65
Payment of note at New York Trust Co.		300,000.00
Payment of note and interest at National City Bank		50,479.16
Paid on account of James A. Stillman	$50,251.22	
Less: Account of Simplex Photo Products	35,540.48	
		14,710.74
Total proceeds		2,250,000.00

Common stock reclassified 5 for 1 in 1929 making 1,000,000 shares common, 25,000 shares preferred outstanding.

August 1, 1929, General Theatres common exchanged for International common 800,000 shares International received 1¼ for 1, 200,000 shares International received share for share.

National Theatre Supply Co.

September 1926, Capitalization Authorized and Issued (Incorporated in Delaware):		
5-year sinking fund gold notes due Jan. 1, 1931		$1,500,000
$7 dividend preferred stock, no par	shares	20,000
Common stock, no par	do	500,000

Securities disposed of as follows:	
$1,500,000 gold notes sold to bankers at 90	1,350,000
15,000 shares preferred sold to bankers at 80	1,200,000
5,000 shares preferred sold to H. L. Clarke at 80	400,000
120,000 shares common sold to bankers at 25 cents	30,000
380,000 shares common sold to H. L. Clarke for cash ($2.42)	921,179
Total proceeds	3,901,179

Proceeds used to acquire from owners business and assets of some 30 theatre supply companies.

August 1, 1929, General Theatres Equipment common exchanged for National Theatres common: 412.791 shares National Theatres received share for share. 141,416 shares National Theatres received three-quarters share for one. (Common stock in excess of original 500,000 shares issued subsequently.)

Theatre Equipment Acceptance Corporation

August 1927, Capitalization Authorized and Issued (Incorporated in Delaware):	
First preferred stock, no par, 3,000 shares	$300,000
Second preferred stock, no par, 2,000 shares	200,000
Common stock, no par, 5,000 shares	50,000

August 16, 1927, Webster loaned National Theatres $100,000, repaid March 16, 1928.

December 12, 1927, Webster loaned Theatre Equipment Acceptance Corporation $100,000, repaid March 15, 1928.

September 1927, Theatre Equipment Acceptance Corporation erroneously showed sale of 5,000 shares common stock to National Theatres for $100,000.

February 1928, Theatre Equipment Acceptance Corporation corrected original entry by reversing, and recorded sale to Webster of 5,000 shares common for $50,000 and 500 shares second preferred for $50,000.

August 1, 1929, Webster exchanged 5,000 Theatre Equipment Acceptance Corporation common for 25,000 General Theatres Equipment common.

Lamp companies and Grandeur

August 1929, General Theatres Equipment bought from H. L. Clarke all stock of McAuley, Strong Electric, Ashcraft, and Hall & Connolly for $3,000,000 cash.

August 1929, Grandeur bought from H. L. Clarke stock of Mitchell Camera for $3,100,000 cash.

Cost to H. L. Clarke of above, and disposition of funds as follows:

Purchase price of assets:		
J. E. McAuley Manufacturing Co	$1, 131, 422. 93	
Strong Electric Co	316, 000. 00	
Ashcraft Automatic Arc Co	150, 000. 00	
Hall & Connolly, Inc	160, 000. 00	
Mitchell Camera Co	1, 475, 000. 00	
		$3, 232, 422. 93
Paid Wm. Fox Aug. 1, 1929, to be used for purchase of half of Grandeur stock		2, 000, 000. 00
Given Wm. Fox, 25,000 shares General Theatres Equipment at 30, with repurchase agreement		750, 000. 00
Commissions to H. E. Van Duyne		100, 000. 00
Interest paid by H. L. Clarke re lamp companies		14, 627. 58
Expenses incidental to acquisition		2, 949. 49
Total		6, 100, 000. 00

General Theatres Equipment Inc.

[July 11, 1929, incorporated in Delaware. Authorized 5,000,000 shares no par common. Common stock issued, 2,840,786 shares]

	Shares issued	Book value
To acquire common stocks of subsidiaries:		
Aug. 29.		
International Projector Corporation, 999,600 shares	1, 199, 933	$28, 488, 600. 00
National Theatre Supply Co., 554,207 shares	518, 853	12, 787, 578. 65
Theatre Equipment Acceptance Corporation, 5,000 shares	25, 000	50, 000. 00
Sold to bankers Aug. 1, 1929, at $20	300, 000	6, 000, 000. 00
Used for conversion of $6,000,000 debentures on June 30, 1930	180, 000	5, 579, 875. 00
Sold to bankers in April 1930 at $40 per share, less commission of $2.50 per share, to net General Theatre Equipment $37.50 per share. (Of this amount $12.50 credited to capital surplus and $25 per share to capital stock)	617, 000	15, 425, 000. 00
Total	2, 840, 786	68, 331, 053. 65
Less amount credited to capital surplus in original organization		5, 000, 000. 00
Capital stock account at time of prior acquisition		63, 331, 053. 65

August 1, 1929, sold to Chase Securities, Pynchon, West, Hammons, and Halsey, Stuart the following securities:

300,000 shares General Theatre Equipment, Inc., common at 20	$6, 000, 000
$6,000,000, 15-year 6 percent debentures at 90	5, 400, 000
Total	11, 400, 000

The proceeds from these sales were used as follows:

International Projector Corporation, 25,000 shares preferred stock at 115	2, 875, 000
National Theatre Supply Co.:	
20,000 shares preferred stock at 107½	2, 150, 000
$235,800 5-year 6½ sinking fund gold notes at 105	247, 590
Theatre Equipment Acceptance Corporation:	
3,000 shares $6 dividend preferred stock, at 110	330, 000
2,000 shares $7 dividend preferred stock, at 105	210, 000
Grandeur, Inc., 50,000 shares (50 percent) capital stock	2, 000, 000
J. E. McAuley Manufacturing Co.[1] The Strong Electric Corporation[1] Ashcraft Automatic Arc Co.[1] Hall & Connolly, Inc.[1]	3, 000, 000
Cash for working capital	587, 410
Total, as above	11, 400, 000

Fox Purchase

Apr. 7, 1930, purchased Fox Film and Fox Theatres class B as follows:		
Cash payment to William Fox Apr. 7, 1930, for 50,101 shares Fox Film class B and 100,000 shares Fox Theatres class B		$15, 000, 000 .00
2,500 shares Fox Film class B purchased from Branch Brook, Inc., on May 1, 1930		712, 500. 00
Notes of General Theatres Equipment given William Fox on Aug. 13, 1930, in order to secure the release of his claims in connection with the original stock purchase, in settlement of certain claims of Fox in connection with the issue of 1,600,000 additional shares Fox Film Corporation class A stock in which Fox claimed a 20 percent participation which was not provided him, and other claims under the original purchase contract.		
9 notes for $300,000 each, dated Aug. 13, 1930, due 1 year from date	$2, 700, 000. 00	
1 note for $200,000 dated Aug. 13, 1930, due 1 year from date	200, 000. 00	
1 note for $100,000 dated Aug. 13, 1930, due 1 year from date	100, 000. 00	
Total	3, 000, 000. 00	
Less: Note turned back to General Theatres Equipment by William Fox and canceled	200, 000. 00	
		2, 800, 000. 00
Note of General Theaters Equipment dated Aug. 13, 1930, due in 60 days (and paid at maturity) given to Albert M. Greenfield for his services in connection with the settlement of claims of William Fox for $3,000,000 as above stated		250, 000. 00
33,493 shares Fox Film Corporation class B VTC received in exchange for 100,479 shares Fox Film Corporation class A stock VTC (May 31, 1931)		3, 094, 524. 10
Total cost at Dec. 31, 1931, of 86,094 shares Fox Film Class B and 100,000 shares Fox Theatres class B owned by General Theatres Equipment		21, 857, 024. 10

[1] Entire capital stock of each of these companies purchased from H. L. Clarke for $3,000,000.

Fox Financing

Apr. 18, 1930, additional issue 1,600,000 shares Fox Film class A sold at 30; 440,000 shares taken by bankers, 1,160,000 shares by General Theatres Equipment. With subsequent purchases General Theatres Equipment investment and Fox Film class A as follows:

Original participation in new issue, 1,000,000 shares	$30,000,000.00
Shares originally intended for William Fox purchased by General Theatres Equipment, 160,000 shares	4,800,000.00
Purchased on open market during 1930, 176,600 shares	6,364,239.66
Totals December 31, 1930, 1,336,600 shares	41,164,239.66
Total of above 2 groups	63,021,263.76
Less: Duplication cost of 100,479 shares class A	3,094,524.10
Total cost: 1,336,600, Fox Film A; 86,094, Fox Film B; 100,000, Fox Theatres B	59,926,739.66

In order to purchase the first 2 blocks, totaling 1,160,000 shares, General Theatres Equipment raised funds as follows:

Apr. 18, 1930, borrowed from Chase National Bank on 30-day note for $27,000,000, $15,000,000 used to pay note dated Apr. 7, 1930, balance in connection with purchase of A	12,000,000.00
Sold to Pynchon & Co., 350,000 shares General Theatres Equipment common stock at $40 less commission of $2.50; net, $37.50	13,125,000.00
Sold to Halsey Stuart & Co., 133,500 shares General Theatres Equipment common at $40 less commission of $2.50 per share; net, $37.50	5,006,250.00
Sold to H. L. Clark 133,500 shares General Theatres Equipment common, at $37.50 net	5,006,250.00
Total	35,137,500.00

May 1, 1930, sold to Chase Securities, Pynchon, West, Hammons, and Halsey Stuart $30,000,000, 10 year 6 percent debentures, dated April 1, 1930. Sold at 90, proceeds $27,000,000, used to pay note at Chase dated April 18, 1930.

Summary Chase loans

	Borrowed	Paid off	Balance owing
Apr. 7: Borrowed to make cash payment to Wm. Fox for Film and Theaters, class B	$15,000,000		$15,000,000
Apr. 18: Borrowed to raise funds to pay for Fox class A and to retire Apr. 7 loan	27,000,000	$15,000,000	27,000,000
Apr. 30: Borrowed from Chase Securities Corporation	2,000,000		29,000,000
May 1: Paid off Apr. 18 note with proceeds from sale of $30,000,000 debentures		27,000,000	2,000,000
May 6: Borrowed from Chase National, paid off Apr. 30 loan from Chase Securities	2,500,000	2,000,000	2,500,000
May 7: Borrowed from Chase National	2,500,000		5,000,000
May 16: Part payment on May 6 loan		1,000,000	
Oct. 10: Borrowed to retire May 7 loan, balance of May 6 loan, and to provide $6,000,000 new funds	10,000,000	4,000,000	10,000,000
1931			
Apr. 11: Borrowed to purchase 100,000 shares Film Securities Corporation preferred stock	9,700,000		19,700,000

The latter two large loans were secured as follows:

Ten million dollar loan of October 10, 1930: 800,000 shares Fox Film Corporation class A VTC; 19,769 shares National Theatres Supply Co. $7 preferred; 24,640 shares International Projector Corporation $7 preferred.

Nine million seven hundred thousand dollar loan of April 14, 1931: 250,000 shares Fox Film Corporation class A VTC; 100,000 shares Film Securities Corporation $7 preferred.

December 1, 1930, stock of General Theatre Equipment reclassified; one third share $3 preferred, and two thirds share new common given for each share old common.

December 11, 1930, Webster Securities Corporation exchanged 258,877 shares $3 preferred with syndicate managed by Pynchon (Syndicate agreement dated Nov. 10, 1930), receiving 258,877 shares new common stock.

STOCK EXCHANGE PRACTICES

FRIDAY, NOVEMBER 17, 1933

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment on yesterday, in the caucus room of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, associate counsel to the committee; Alfred E. Mudge, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern, also William Dean Embree and A. Donald MacKinnon, of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and The Chase Corporation; and Martin Conboy, counsel for Albert H. Wiggin.

The CHAIRMAN. The subcommittee will come to order. Before we proceed with the regular inquiry that is being made now, I should like to have made a part of the record, in order that it may be preserved and considered, a communication from Mr. Henry Goldman, Jr., of 29 Broadway, New York City, a member of the New York Stock Exchange, who makes certain suggestions with regard to some matters in connection with our study of the stock exchange. I think it a very important contribution to the subject. He wrote me on November 3, 1933, and sent a copy of a letter which he had addressed on the same date to Mr. Richard Whitney, who is the President of the New York Stock Exchange. Inasmuch as I consider these suggestions he makes quite valuable to us in our study of the subject, I wish the two letters made a part of the record.

HENRY GOLDMAN, Jr.,
November 3, 1933.

Senator DUNCAN U. FLETCHER,
Chairman Committee on Banking and Currency,
United States Senate, Washington, D.C.

MY DEAR SIR: In addressing this letter to you, permit me to introduce myself as a member of the New York Stock Exchange, and incidently a specialist on that exchange operating for my own account. So that you may be a little more familiar with who I am, let me say that my father was for many years the senior member of the firm of Goldman, Sachs & Co., having retired and severed all connections with that firm in 1917. And likewise I beg to state that I have had no connection with that firm since 1917, when I was employed there as a clerk.

The purpose of this letter is to be helpful to you and your committee in formulating a basis upon which the stock exchange of the country may operate without the constant storm of criticism from the Government and the vast public. At the same time let me say that my services are yours for the asking

In my opinion the banks and bankers and the stock exchange of the country have lost the confidence of the public, and I believe that this confidence must be restored as a part of the general program of recovery.

The Securities Act of 1933 is the direct outcome, in my opinion, of the acts of the banks and the bankers. That reform was necessary, I agree 100 percent. And likewise I agree that a reform of stock exchange practices is also necessary.

Men that I have contact with in my business life consider you and your committee the enemies of Wall Street. I, for one, do not.

Enclosed herewith I forward you a copy of a letter which I wrote today to Mr. Richard Whitney, President of the New York Stock Exchange, which speaks for itself, and is ample proof of what I stand for.

However, I believe that reform can be brought about without going through many weeks and months of brokers' testimony, answering of questionnaires, unpleasant articles appearing in the newspapers, and all the things which contribute to further undermining confidence.

The method I propose is the following:

1. That the Federal Government appoint a board of six men, call this board what you will, and give it the power to establish on the various stock exchanges rules and regulations for trading in securities which are not only legal, but fair and equitable to all concerned.

2. That this board shall be composed of the following:

Two members of the Committee on Banking and Currency of the United States Senate.

Two members of leading stock exchanges.

Two business or financial men who are known to understand the technique of stock-exchange business.

3. That the duties of this board further shall be to supervise, regulate, and scrutinize the activities of stock exchanges, stock-exchange firms, and stock-exchange members.

4. That the members of this board be appointed for periods of 2 years without regard to their political affiliations.

I beg to remain.

Respectfully,

HENRY GOLDMAN, Jr.

HENRY GOLDMAN, Jr.,
New York, November 3, 1933.

Mr. RICHARD WHITNEY,
New York City.

DEAR MR. WHITNEY: On July 31 I wrote you a letter, the contents of which you are familiar with, and your kind response made me feel that you would welcome constructive suggestions in regards stock exchange practices, hence this communication.

Not a day has passed in the last few months but what I have felt more and more that changes must be made in stock exchange practices, or the Federal Government will step in and force these changes upon us. And I wish to go on record as saying that unless we, the stock exchange members, initiate and bring about these changes there is no telling how far the Government will go.

Therefore can we not have the courage to take the bull by the horns and make the changes that are necessary to satisfy the Government as well as the vast public?

I think you will agree with me when I say that both the banks and the bankers have lost the confidence of the public, and in my opinion their improprieties were the causes of the Securities Act of 1933.

Rightly or wrongly, I say the stock exchanges of the country have likewise lost the confidence of the public, and I believe this confidence can be restored, the more so if we, rather than the Government, initiate and bring about the changes that are inevitable.

I am as much interested in doing business and making money as the other 1,374 members of the New York Stock Exchange. However, I feel that we are confronted with a great problem, and each one of us must look at the situation

with broad vision, and not in the light of each one's selfish interests. I say this in view of the recommendations I am about to make, which would vastly affect the present set-up of many stock exchange firms and stock exchange members, including specialists, of whom I am one.

Therefore, I propose the following:

1. That the membership of the New York Stock Exchange shall be divided into two classes: (1) brokers, (2) dealers; and that each member shall be registered with the exchange as broker or dealer.

2. That no member of the exchange shall be permitted to change from broker to dealer, or vice versa, in less than 6 months.

3. That any member of the exchange who shall be a member of a firm, said firm shall be regarded in the classification of its stock exchange member; and, furthermore, firms having more than one exchange member, such members must be registered in the same identical classification.

4. That dealers shall be allowed to buy and sell securities for their own account only.

5. That brokers shall be allowed to buy and sell securities for the account of others only; this to be regarded as commission business, and shall apply to all classes of orders whether for nonmembers or for members.

6. That the odd-lot firms shall be registered as dealers and the associate brokers of odd-lot firms shall be registered as brokers.

7. That no firm registered as broker or any member of such firm be permitted to trade directly or indirectly in securities for its or h's own account.

8. That no member of the stock exchange be permitted to have an interest in a joint account, pool, syndicate, or any such term as such an account might be given.

9. That no member of the stock exchange be permitted to have an option, a put, or a call on any listed security.

10. That the margin requirement on all accounts be maintained at the rate of 50 percent.

11. That long accounts and short accounts shall be set up on the books of all firms separately and that each such account shall be separately and individually margined.

12. That in the execution of orders on the stock exchange brokers only, and not dealers, shall have the privilege of stopping stock.

13. That stop loss orders, both buy and sell, shall be eliminated from stock exchange practice.

14. That the governing committee of the stock exchange be enlarged to include: Two United States Senators, each to be a member of a different political party, and at least one to be a member of the Committee on Banking and Currency of the United States Senate; two governors of the Federal Reserve Board; two presidents of leading commercial banks; one president of a leading life insurance company; one president of a leading fire insurance company.

In conclusion, let me say that I believe it does us, the stock exchange members, no good and it does the securities business no good to be constantly under a barrage of criticism, and at the same time to be looked upon by the 120 million people of the United States in a light of suspicion. Therefore, let us settle the uncertain ground we are walking upon once and for all. At the same time I believe that if a program along the lines I suggest were followed, the Government, as well as the press would be more aggressive in leaving us alone than in pursuing us as they now are.

This letter is not meant as a criticism of the New York Stock Exchange, of which I am proud to be a member, but quite to the contrary, it is my earnest desire to be helpful, and believe me to be

Very sincerely yours,

(Unsigned carbon copy enclosed to Sen. Fletcher by Mr. Henry Goldman, Jr.)

TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. Pecora. Mr. Clarke, have you any statement to make to the committee?

Mr. Clarke. (Shakes his head.)

Mr. Pecora. Have you been able to produce here this morning the documents or other written evidences that I asked you yesterday to

produce here concerning transactions that you had whereby you acquired as intermediary for General Theatres Equipment, or others, the assets of the four lamp companies and of Mitchell Camera Corporation that were alluded to in your testimony yesterday?

Mr. CLARKE. Yes, sir. We have sent for them and they are supposed to reach here sometime during the morning.

Mr. PECORA. When do you expect them to arrive?

Mr. CLARKE. Not later than 12 o'clock noon.

Mr. PECORA. All right. Now, Mr. Clarke, referring to a document put in evidence yesterday as committee Exhibit No. 135, are you now able to make any explanation, or reconcilement, of the statements and figures incorporated in this exhibit under the caption "Lamp Companies and Grandeur", on the second page thereof, with respect to the transaction whereby, in the first instance, you acquired the stock of the Mitchell Camera Co. and transferred that stock to Grandeur, Inc.?

Mr. CLARKE. I shall be glad to do so.

Mr. PECORA. Well, go ahead; and you have had since yesterday to ponder the subject.

Mr. CLARKE. It is only a matter of restating it, if I can, clearly.

Mr. PECORA. All right.

Mr. CLARKE. The statement of $3,100,000 cash paid to me for the acquisition of certain properties, was made it is true, and the allocation of value given for the $1,475,000 paid for the Mitchell Camera Co., plus a value given to the Grandeur interests, patents and so forth, claimed by Mr. Fox and owned by him, that is a purely arbitrary value as I see it, set up on the books of the Grandeur Co. and none of the items put together here will make that $3,100,000 as far as I am able to see.

Mr. PECORA. Where originally did you get the information, or what knowledge did you originally have of the fact which caused you to say in this statement, and I refer to the paper marked "Committee Exhibit No. 135", that on August 1, 1929, Grandeur bought from you the stock of the Mitchell Camera Co., for $3,100,000 cash?

Mr. CLARKE. As I explained to you, Mr. Pecora, this memorandum was made up at the request of Mr. Ross of your staff, for your guidance and convenience, from information we had available. We did the best we could, and we put down here what we had. We did not take it from the books of the company, and in so far as any of us knew, the statement was accurate. I find that it was not, as you know in one other matter which I corrected as soon as I found it out. This statement as to the allocation of this value, as far as we know, is still correct. But I have not seen this on the Grandeur books myself. But this was information taken from a memorandum we had in our office, and we put it down just as we had it.

Mr. PECORA. Then you had some memorandum or other record indicating or tending to indicate that in August of 1929 you received from Grandeur, Inc., the sum of $3,100,000 cash for the stock which you had acquired in the Mitchell Camera Corporation?

Mr. CLARKE. And other things, yes; things that went along with it were allocated to that value, and it was so intended when we made this memorandum, breaking it up.

Mr. PECORA. Did you receive the sum of $3,100,000 cash from the Grandeur Co. in August of 1929 for something?

Mr. CLARKE. Yes, certainly.

Mr. PECORA. You did?

Mr. CLARKE. Yes, and I also received another——

Mr. PECORA (interposing). That part of the statement is correct?

Mr. CLARKE. That is right.

Mr. PECORA. You did receive $3,100,000 cash from the Grandeur Co. in August of 1929?

Mr. CLARKE. Yes.

Mr. PECORA. Now, what did you give to the Grandeur Co. for that $3,100,000 cash?

Mr. CLARKE. We gave them the Mitchell Camera Co. and all of the claims of Mr. Fox, everything that was in dispute with Mr. Fox was given over to the Grandeur Co.

Mr. PECORA. What were those claims of Mr. Fox's that you are speaking about now?

Mr. CLARKE. Well, Mr. Fox claimed that he owned all of the Grandeur Co. at one time, everything that had to do with Grandeur patents, and so forth.

Mr. PECORA. Well, it strikes me that that is somewhat at variance with the testimony you have heretofore given, that you caused the Grandeur Co. to be organized for the express purpose of taking over the assets of the Mitchell Camera Corporation.

Mr. CLARKE. No, it is not at variance at all.

Mr. PECORA. What interest did Mr. Fox have?

Mr. CLARKE. Grandeur is the name of sound apparatus as well; and two people could have sound patents, or many people could have, and Grandeur is simply a name that was given to a certain development in the film business, of film pictures, including sound apparatus, including special machines, including special cameras. And I can best state it to you how special it would be when I say it was estimated that it would cost the entire industry 150 million dollars to replace their equipment with this equipment.

Mr. PECORA. I am afraid now you are talking about something I am not inquiring about.

Mr. CLARKE. Well, I am trying to answer your question.

Mr. PECORA. Well, you answered questions yesterday to the effect that Grandeur, Inc., was a corporation which you caused to be organized. Is that correct?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, you also stated yesterday in the course of your testimony that the reason why Grandeur, Inc., was organized by you, was to take over the assets of the Mitchell Camera Co., which you meanwhile had acquired from the Mitchell Camera Co. as an intermediary for Grandeur, Inc., which was about to be organized. Now, was that testimony given by you correct?

Mr. CLARKE. Yes, sir.

Mr. PECORA. All right. Then you acquired for $1,475,000, as such intermediary for the Grandeur Co. about to be organized, all of the assets of the Mitchell Camera Co., didn't you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And then you turned those assets over to Grandeur, Inc., upon its organization, didn't you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And what did you get from Grandeur, Inc., for those assets?

Mr. CLARKE. I got $3,100,000.

Mr. PECORA. Did you say $3,100,000?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Well, then, you also testified yesterday, as I recall it, that you received from Grandeur, Inc., the same amount that you had paid for the assets of the Mitchell Camera Co., which amount you said was $1,475,000.

Mr. CLARKE. That is just one of the items. That is for the Mitchell Camera Co.; yes.

Mr. PECORA. Now, what other assets of the Mitchell Camera Co. did you acquire that you turned over to Grandeur, Inc., but which you have not already mentioned?

Mr. CLARKE. Whatever claims Mr. Fox had. Mr. Fox claimed a great many things, and he also claimed that he had an interest in the Grandeur development made by the Mitchell Camera Co. He made many, many claims. Now, all of those were settled, Mr. Pecora, with Mr. Fox by paying him 2 million dollars, plus the stock.

Mr. PECORA. Did Mr. Fox have any interest in the Mitchell Camera Co. at the time you purchased its assets?

Mr. CLARKE. No. He had no interest that I know of. His claim was on a development that he had made there in those Grandeur cameras. Kindly distinguish between Grandeur as a product and Grandeur as a name, just like a sound machine and sound as we know it in the motion picture business. Grandeur, Inc., was a corporation, and when I have been speaking of Grandeur, perhaps, in my statement heretofore this morning, I was talking of the product, you see, of the products and patents and everything else relating to the development of the Grandeur film.

Mr. PECORA. Did you have any attorney examine into the claims of Mr. Fox, the claims that you have just mentioned?

Mr. CLARKE. Oh, yes. There was plenty of examination.

Mr. PECORA. Who examined that matter?

Mr. CLARKE. Principally Mr. Koegel.

Mr. PECORA. Were those claims of Mr. Fox's based upon patents?

Mr. CLARKE. Yes.

Mr. PECORA. And did Mr. Koegel inquire into the validity of Mr. Fox's claim?

Mr. CLARKE. Of the claims, yes, but I don't know how much he inquired into the validity of the patents.

Mr. PECORA. General Theatres Equipment, Inc., was interested, according to this contract of July 9, 1929, in pursuance of the terms and provisions of which General Theatres Equipment, Inc., was organized, only in acquiring the stock and assets of the Mitchell Camera Co., wasn't it?

Mr. CLARKE. Did you say General Theatres?

Mr. PECORA. Yes.

Mr. CLARKE. No. It was interested in acquiring that, and was interested in acquiring Grandeur, and much more in acquiring Grandeur, and it was necessary to have Mitchell Camera Co. as well.

Mr. PECORA. Where is there anything in this agreement of July 9, 1929, which has been introduced in evidence as committee exhibit no. 133, which obligates General Theatres Equipment, Inc., to purchase from Mr. Fox anything that he had of value by way of claims or anything else?

Mr. CLARKE. I do not know that there is anything in there.

Mr. PECORA. Just show it to me if you can (passing over to the witness, Committee Exhibit No. 133).

Mr. CLARKE. I do not know that there is anything in there. I do not imagine there is.

Mr. PECORA. Just look at it and see, and tell us.

Mr. CLARKE (after looking over the paper). There is nothing here that mentions Mr. Fox.

Mr. PECORA. Is there anything there that mentions purchasing from Mr. Fox or anybody else any claims of the amount of 2 million dollars?

Mr. CLARKE. No; it just speaks of the acquisition of half of the Grandeur stock for 2 million dollars.

Mr. PECORA. Where are the minute books of Grandeur, Inc.?

Mr. CLARKE. I don't know.

Mr. PECORA. Was there a written agreement of any kind entered into between you and Grandeur, Inc., defining or setting forth the terms and provisions and conditions under which you transferred to Grandeur, Inc., the interests or assets of the Mitchell Camera Co., which you had acquired as intermediary?

Mr. CLARKE. It was a settlement we made with Mr. Fox, and I don't think there was any written agreement in advance at all. But probably there was an agreement made at that time.

Mr. PECORA. Now, I haven't asked you anything about Mr. Fox.

Mr. CLARKE. Well, then, I misunderstood you.

Mr. PECORA. You set out to acquire the assets and the stock of the Mitchell Camera Co. originally with a view to turning those assets over to a corporation to be organized by you for that purpose, and which was eventually organized under the name of Grandeur, Inc., didn't you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, at the time or before you transferred the stock and assets of the Mitchell Camera Co. to Grandeur, Inc., was a written agreement of any kind entered into between you or any agent or representative of yours, with Grandeur, Inc., covering the terms and conditions of the purchase by Grandeur, Inc., from you of the assets of the Mitchell Camera Co.?

Mr. CLARKE. I don't recall.

Mr. PECORA. What was that answer?

Mr. CLARKE. I don't recall any such thing.

Mr. PECORA. Well, can you conceive of the possibility that a transaction of that importance, involving as it did about 1½ million dollars or more, could have been carried out without some written agreement defining the rights, interests, and obligations of the parties to the transaction?

Mr. Clarke. Yes, I can; for the reason that through my efforts Mitchell Camera Co. was acquired for the benefit of General Theaters, and it was put into Grandeur, Inc., for the same reason.

Mr. Pecora. All right. But was all that done on an oral understanding or agreement?

Mr. Clarke. No. There was a written agreement for the purchase of Mitchell Camera Co.

Mr. Pecora. Was there a written contract for the purchase by either Grandeur, Inc., or General Theatres Equipment, Inc., of the assets of Mitchell Camera Co., which you had purchased?

Mr. Clarke. I say to you that I don't recall.

Mr. Pecora. Well, I ask you, then, can you conceive of the possibility that such a transaction could have been consummated without a written agreement defining the rights, interests, liabilities, and obligations of the respective parties to that transaction?

Mr. Clarke. Certainly I can, because it was acquired for that purpose and turned right over to them.

Mr. Pecora. Would you enter into a transaction of that magnitude without a written agreement defining the rights and interests of the parties?

Mr. Clarke. There may be such an agreement. I don't recall one; but I certainly would make such an agreement, and would consider it a good business transaction, on the basis of the contract that was made for the purchase in this case of the Mitchell Camera Co.

Mr. Pecora. When you turned over whatever you had acquired of Mitchell Camera Co. to Grandeur, Inc., did you execute an instrument, deed, conveyance, assignment, bill of sale, or anything?

Mr. Clarke. Of course, it was in my name, and the documents had to be made.

Mr. Pecora. And were such documents prepared?

Mr. Clarke. Certainly.

Mr. Pecora. Who prepared them in your behalf?

Mr. Clarke. I think they were probably prepared by the legal advisors of the bankers.

Mr. Pecora. By the legal advisors of whom?

Mr. Clarke. Of the bankers, and by Mr. Koegel on behalf of myself.

Mr. Pecora. And by "the bankers" do you mean the syndicate composed of Chase Securities Corporation, Shermar Corporation, West & Co., Pynchon & Co., and W. S. Hammons & Co.?

Mr. Clarke. Certainly.

Mr. Pecora. Who was their legal representatives?

Mr. Clarke. Rushmore, Bisbee & Stern were their representatives.

Mr. Pecora. Do you recall which individual member or members of that firm attended to those legal details?

Mr. Clarke. I do not, Mr. Pecora.

Mr. Pecora. Mr. Mudge, may I ask you off the record——

(Thereupon Mr. Pecora made an inquiry of Mr. Mudge off the record.)

Mr. Pecora. Now, Mr. Clarke, did you have a written agreement with Mr. Fox under which you paid him, as you claim, the sum of 2 million dollars?

Mr. Clarke. I don't recall any.

Mr. PECORA. How did you pay him, by check?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Was the check drawn against your individual deposit account?

Mr. CLARKE. The money was deposited, and the check was drawn, yes, sir, against my account.

Mr. PECORA. And you drew it against a deposit account which included this $3,100,000 cash that you had obtained from Grandeur, Inc.?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, have you a memorandum of the date or dates of any such checks that you gave Fox?

Mr. CLARKE. Yes, sir.

Mr. PECORA. What are they?

Mr. CLARKE. There were two checks, both dated August 1, 1929.

Mr. PECORA. Well, go on.

Mr. CLARKE. One for $1,625,000, and one for $375,000.

Mr. PECORA. Both drawn by you?

Mr. CLARKE. Drawn by me, on the Chase National Bank of the city of New York.

Mr. PECORA. To the order of William Fox?

Mr. CLARKE. Yes, sir: and certified by the Chase National Bank and given to him.

Mr. PECORA. Did you receive from Fox any instrument of assignment or otherwise transferring to you or to Grandeur, Inc., any claims or property rights of any kind that he had for which you paid him this sum of two million dollars?

Mr. CLARKE. I assume that the proper documents were drawn for the whole transaction.

Mr. PECORA. Do you recall whether any such documents were drawn and delivered?

Mr. CLARKE. I do not recall the document; no, sir.

Mr. PECORA. Do you recall who drew any such documents?

Mr. CLARKE. I do not.

Mr. PECORA. What attorney or attorneys acted for you in those transactions?

Mr. CLARKE. Mr. Koegel acted for me.

Mr. PECORA. Mr. Koegel?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. What were the dates of those checks?

Mr. CLARKE. Both dated the same day, August 1, 1929.

Mr. PECORA. Was that date, August 1, 1929, the date upon which you received the payment of $3,100,000 from Grandeur, Inc.?

Mr. CLARKE. Probably so, but I don't know. All that I have is a memorandum here that says August of 1929, and this was August 1 that the checks were issued, and so I assume it was the same day.

Mr. PECORA. Now, referring again to committee exhibit no. 135 in evidence, and to page 2 thereof, you will find on your copy thereof the following item:

> Paid William Fox August 1, 1929, to be used for the purchase of half of Grandeur stock, $2,000,000.

Mr. CLARKE. I do find it.

Mr. PECORA. And is that the item that relates to these two payments by check aggregating 2 million dollars?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Well, according to that item, that was paid to Mr. Fox not for anything that Mr. Fox turned over to you, as I understand the phraseology of this item, but it was paid to Mr. Fox to be used by him for the purchase of half of the Grandeur, Inc., stock.

Mr. CLARKE. Yes, sir; that is correct.

Mr. PECORA. And that is correct?

Mr. CLARKE. Yes, sir; that is the way the deal was made.

Mr. PECORA. Well, was Mr. Fox to purchase that half of the Grandeur stock for himself?

Mr. CLARKE. Yes.

Mr. PECORA. Well, how in the world did Grandeur, Inc., get the benefit of anything from Mr. Fox for that 2 million dollars?

Mr. CLARKE. It is a part of the consideration, Mr. Pecora.

Mr. PECORA. What was that answer?

Mr. CLARKE. It was a part of the consideration for what was given Mr. Fox.

Mr. PECORA. A part of the consideration for what?

Mr. CLARKE. For Mr. Fox's interests and claims, and so forth, and so forth. And he claimed nearly everything regarding Grandeur, and this settlement was made with him, and about that time a contract was also made with him to acquire for all the 1,000 theaters owned by Fox Theaters, and the Fox Films, the Grandeur apparatus which I testified about last week.

Mr. PECORA. What benefits did Grandeur, Inc., or General Theatres Equipment, Inc., get for the 2 million dollars which it paid to Fox, which according to the statement you have just made, was to enable Fox to purchase half of Grandeur, Inc., stock?

Mr. CLARKE. We bought all of Mr. Fox's claims of every kind in the Grandeur development. And it also assured us the business of Fox Theaters and Fox Films for Grandeur apparatus.

Mr. PECORA. Who owned Grandeur, Inc., at the time that Fox received the $2,000,000 to be used for the purchase by him of half of its stock?

Mr. CLARKE. As I testified, it was organized by General Theatres to take over Mitchell Camera Co. and these other things that Mr. Fox claimed, and other claims.

Mr. PECORA. If it was organized by General Theatres Equipment, Inc., it was so organized in pursuance of the agreement and understanding that you had arrived at with the members of the banking syndicate, wasn't it?

Mr. CLARKE. I would say so; yes.

Mr. PECORA. And that agreement was reduced to writing and consists of Committee Exhibit No. 133 heretofore put in evidence, doesn't it?

Mr. CLARKE. Yes.

Mr. PECORA. Why wasn't there anything said in this agreement, then, concerning Mr. Fox and his interests, or as to what he was to acquire in Grandeur, Inc., or what Grandeur, Inc., was to acquire from him?

Mr. CLARKE. I don't know.

The CHAIRMAN. Were half of the shares of Grandeur, Inc., actually issued to Mr. Fox?

Mr. CLARKE. Yes, sir; either to Mr. Fox or his nominees.

The CHAIRMAN. That 2 million dollars was not absolutely given by you to Mr. Fox, or loaned by you to Mr. Fox, but was in payment of Mr. Fox's claims; is that it?

Mr. CLARKE. That is correct.

Mr. PECORA. Now, what is meant by the item that appears also in Committee Exhibit No. 135, on page 2 thereof, under the caption "Lamp Companies and Grandeur", and which reads as follows:

> And gave William Fox 25,000 shares of GTE at $30, with repurchase agreement, $750,000.

What does that refer to?

Mr. CLARKE. The stock was also a part of the consideration, and the stock was given to him to either keep or dispose of according to that agreement to repurchase.

Mr. PECORA. Was that stock given to him in payment of those claims of his?

Mr. CLARKE. A part of the consideration; yes, sir.

Mr. PECORA. That is, stock worth $750,000 was given to him in addition to the 2 million dollars in cash?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Well, who gave him those 25,000 shares of General Theatres Equipment, Inc.?

Mr. CLARKE. I don't know. I supopse General Theatres did, or I loaned it to them. I gave it to them.

Mr. PECORA. You did what?

Mr. CLARKE. I gave it to them.

Mr. PECORA. Out of your holdings?

Mr. CLARKE. Yes, sir. Mr. Keller says out of my holdings.

Mr. PECORA. Who says so?

Mr. CLARKE. Mr. Keller advises me that it was given out of my holdings.

Mr. PECORA. Did Mr. Keller, at the time you had this transaction with Fox, represent you?

Mr. CLARKE. No, unfortunately not. [Laughter.]

Mr. PECORA. Then whatever knowledge or information he has about the matter is purely hearsay?

Mr. CLARKE. No. He got that from the records. All this information was information secured from our own records and from other sources, wherever we could get it.

Mr. PECORA. Then, so far as he is concerned, it is all hearsay, isn't it?

Mr. CLARKE. Well——

Mr. PECORA. Did you know Mr. Keller in August of 1929?

Mr. CLARKE. Oh, yes.

Mr. PECORA. Was he employed by you in any capacity whatsoever at that time?

Mr. CLARKE. Mr. Keller came with me April 1, 1930.

Mr. PECORA. Did he have anything to do with the transaction that you had in July and August of 1929 with Mr. Fox?

Mr. CLARKE. No.

Mr. PECORA. And you had to be reminded by Mr. Keller that you were the one who turned over those 25,000 shares of General Theatres Equipment, Inc., stock, worth $750,000, to Mr. Fox?

Mr. CLARKE. Mr. Pecora, I am trying to give you correct answers.

Mr. PECORA. But, I say, you had to be reminded by Mr. Keller that you were the person who gave that stock to Mr. Fox.

Mr. CLARKE. I was reminded of it; yes.

Mr. PECORA. You had not recalled it until Mr. Keller reminded you of it, had you?

Mr. CLARKE. No; I believe not.

Mr. PECORA. Will you please tell this subcommittee why it was necessary for you, out of your pocket so to speak, to turn over to Mr. Fox, as part and parcel of this deal, $750,000 of stock? What did you get for it from Mr. Fox or anybody else?

Mr. CLARKE. Well—(and witness ceases speaking while Mr. Keller is whispering to him).

Mr. PECORA. Oh, Mr. Keller, let Mr. Clarke answer the question, please.

Mr. KELLER. All right.

Mr. PECORA. If he cannot answer, let him say so; and if he wants information from you the record will then show he has obtained it from you. But don't whisper anything to him when I put a question to him.

Mr. KELLER. Very well.

Mr. PECORA. Now, answer the question, Mr. Clarke.

Mr. CLARKE. May I have the question read to me, now?

Mr. PECORA. Certainly. The committee reporter will read the question to you. [Which was done.]

Mr. CLARKE. The only consideration I got from it was a benefit that I thought it would be to me for my other stock.

Mr. PECORA. What other stock do you refer to?

Mr. CLARKE. The stock that I owned in General Theatres.

Mr. PECORA. Well, that same benefit would have flowed to the other stockholders, wouldn't it?

Mr. CLARKE. It certainly would.

Mr. PECORA. Why should you, out of your personal shares, turn over to Mr. Fox $750,000 for benefits that were not flowing to you exclusively but which would flow to all of the stockholders of General Theatres Equipment, Inc.?

Mr. CLARKE. Well, I thought it would—well, I have done many things in my life that would benefit all of the stockholders of a company, and I did this in the same spirit.

Mr. PECORA. You say you did this in the same spirit?

Mr. CLARKE. Yes, sir.

Mr. PECORA. In a spirit of liberality and generosity toward your fellow stockholders of General Theatres Equipment, Inc.?

Mr. CLARKE. I did not use those words.

Mr. PECORA. No, but I as using them, and am asking you if that is the fact.

Mr. CLARKE. Yes, it helped them.

Mr. PECORA. Well, we now have another Santa Claus in the record. [Laughter.]

Mr. CLARKE. Thank you.

Mr. PECORA. Now, in this statement, committee exhibit no. 135, there appears this further item under "Lamp Companies and Grandeur" which I will read:

Commissions to H. E. Van Duyne, $100,000.

Who paid those commissions?

Mr. CLARKE. Those commissions were to be paid by me, but they are not paid yet. The amount is put in escrow because it is still in dispute.

Mr. PECORA. When did you prepare the statement that has become Committee Exhibit No. 135 for my guidance?

Mr. CLARKE. I did not prepare it. Mr. Keller prepared it.

Mr. PECORA. When did you cause it to be prepared by Mr. Keller or anyone else?

Mr. CLARKE. I don't know the date.

Mr. PECORA. Was it recently?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Within the last month?

Mr. CLARKE. Yes, sir. At the request of Mr. Ross out here in the hall, I had it prepared to try to help you.

Mr. PECORA. Why did you include that item as a payment actually made?

Mr. CLARKE. Because it is an item that has to be paid if we do not settle it for less; and if it is settled for less the money will go back to General Theatres Equipment, Inc.

Mr. PECORA. The money will go back where?

Mr. CLARKE. To the General Theatres.

Mr. PECORA. Did you say to General Sales?

Mr. CLARKE. No; to General Theatres Equipment, Inc.

Mr. PECORA. Oh. When did you get this $100,000 to be paid to Mr. Van Duyne but which has not yet been paid?

Mr. CLARKE. I got it out of those funds.

Mr. PECORA. That is, back in August of 1929?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And not a penny of it has been paid to Mr. Van Duyne as yet?

Mr. CLARKE. No, sir.

Mr. PECORA. Is this fund in escrow?

Mr. CLARKE. Yes.

Mr. PECORA. Where?

Mr. CLARKE. In Chicago.

Mr. PECORA. In what account?

Mr. CLARKE. In my account.

Mr. PECORA. Is it a special account?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Is it an escrow account?

Mr. CLARKE. Yes, sir.

Mr. PECORA. When was that account established?

Mr. CLARKE. At that time.

Mr. PECORA. Is there litigation between you and Mr. Van Duyne about this amount?

Mr. CLARKE. It has never got into court; no, sir.

Mr. PECORA. Are there any disputes or controversies pending between you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Involving the $100,000?

Mr. CLARKE. Yes, sir.

Mr. PECORA. But they have not gone into court yet?

Mr. CLARKE. No, sir.

Mr. PECORA. What bank in Chicago carries this special account?

Mr. CLARKE. Either the Continental or the Central Trust, and I don't know which.

Mr. PECORA. Don't you recall which bank it is in?

Mr. CLARKE. No. It is just in my account, marked special for Van Duyne.

Senator COUZENS. Is there any escrow agreement?

Mr. CLARKE. There are some letters in existence between myself and Mr. Van Duyne.

Senator COUZENS. So there is no escrow agreement, as a matter of fact?

Mr. CLARKE. But it is considered to be held in escrow for Mr. Van Duyne.

Senator COUZENS. What is there to prevent you from drawing upon it?

Mr. CLARKE. Nothing.

Senator COUZENS. So, in effect, it is not in escrow, if you can draw upon it at any time?

Mr. CLARKE. No.

Mr. PECORA. Did you make an accounting of any kind—did you render an accounting of any kind to General Theatres Equipment, Inc., that made any mention at all of this $100,000?

Mr. CLARKE. Oh, yes.

Mr. PECORA. When?

Mr. CLARKE. At the time this deal was made.

Mr. PECORA. Was it in writing?

Mr. CLARKE. I assume it was.

Mr. PECORA. Have you a copy of it?

Mr. CLARKE. No, sir.

Mr. PECORA. Did you ever have a copy of it?

Mr. CLARKE. I said I assumed such a thing was done. And I suppose it is in the records of General Theatres Equipment, Inc.

Mr. PECORA. I asked you if you ever had a copy of it.

Mr. CLARKE. Not to my knowledge.

Mr. PECORA. Have you any clear recollection that such a written accounting was rendered by you?

Mr. CLARKE. I think it would be necessary, yes.

Mr. PECORA. Well——

Mr. CLARKE (continuing). But I don't know.

Mr. PECORA. Well, you don't know. Is that the answer to my question?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You said it was in either one or the other of two banks. What are the names of those banks, again, as I want to make a note of them?

Mr. CLARKE. It is either in the City National Bank or——

Mr. PECORA (interposing). Oh, then that is a third bank and you had not mentioned it.
Mr. CLARKE. No. It is a new name for the bank, is all.
Mr. PECORA. Well, what is it?
Mr. CLARKE. Now it is the City National Bank.
Mr. PECORA. Do you mean the City National Bank of Chicago?
Mr. CLARKE. That is right.
Mr. PECORA. Or it is in what other bank?
Mr. CLARKE. The Continental Illinois Bank & Trust Co.
Mr. PECORA. That is in Chicago, too?
Mr. CLARKE. Yes, sir; that is in Chicago, too.
Mr. PECORA. What is that, now?
Mr. CLARKE. The Continental Illinois National Bank & Trust Co., I believe is the name.
Mr. PECORA. You are sure the account is in your name as a special account, in the name of Harley L. Clarke, as a special account I mean, and not in the name of just Harley L. Clarke?
Mr. CLARKE. I say it is in my account marked as a special account by me.
Mr. PECORA. Well, I do not quite understand that. Is it in a general-deposit account that you maintain at either one or other of these banks?
Mr. CLARKE. Yes, sir.
Mr. PECORA. When you say it is marked as a special account, what do you mean by that? Where is it marked in that way?
Mr. CLARKE. It is marked in that way on my records.
Mr. PECORA. Where?
Mr. CLARKE. On my records.
Mr. PECORA. Do you say on your records?
Mr. CLARKE. Yes, sir.
Mr. PECORA. And not on the bank records?
Mr. CLARKE. No, sir.
Mr. PECORA. Then the form of the deposit itself is not a special-deposit account, is it?
Mr. CLARKE. Well, I consider it special; yes.
Mr. PECORA. No matter what you may consider it, what is it in form?
Mr. CLARKE. In form it is a general deposit.
Mr. PECORA. It is a general deposit?
Mr. CLARKE. Yes, sir.
Mr. PECORA. Why didn't you tell me that before?
Mr. CLARKE. I did tell you it was a special account held for the benefit of Mr. Van Duyne.
Mr. PECORA. Didn't I ask you specifically if this money that you said was being held in escrow was a deposit in a special account for that purpose, and didn't you say yes in answer to that question, at least in substance?
Mr. CLARKE. I said that, but on your further questioning——
Mr. PECORA (interposing). No; not on my further questions, now, but this question.
Mr. CLARKE. Oh, yes.
Mr. PECORA. To this question I am referring to didn't you answer yes? Didn't you inform this subcommittee, in substance, when I

put the question to you before as to this $100,000 which you said was deposited in escrow, didn't you say it was in a special account? [After a pause.] Didn't you say that, Mr. Clarke?

Mr. CLARKE. I think so; yes.

Mr. PECORA. Now, were you mistaken when you said that?

Mr. CLARKE. Yes.

Mr. PECORA. Is that one of the mistakes you referred to on yesterday as of the nature one is permitted to make?

Mr. CLARKE. Well, Mr. Pecora, there was no intention on my part of trying to mislead you in any way.

Mr. PECORA. Well, I am afraid you have, or else I am very stupid in interpreting your testimony. Now, in this account that you say you have marked on your private records as a special account but which is in the form of a general deposit account, have you a balance today of as much as $100,000?

Mr. CLARKE. Yes; I think so.

Mr. PECORA. Have you always had a balance of $100,000 or more in that account since you deposited that sum of money there?

Mr. CLARKE. I think so.

Mr. PECORA. Have you more than one deposit account in the bank in which this money was deposited by you? And I will tell you frankly my purpose in asking this question; it is to enable me to ascertain from the bank itself as quickly as possible any facts with regard to such account.

Mr. CLARKE. No; I have not. I have only one account in this bank.

Mr. PECORA. And that account is in your individual name, Harley L. Clarke?

Mr. CLARKE. That is right.

Mr. PECORA. Have you, or do you keep deposit accounts in both of those banks?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Don't you know clearly which one of the two it is in, I mean this $100,000 that is on deposit?

Mr. CLARKE. I think it is in the Continental Illinois.

Mr. PECORA. Did you make this $100,000 deposit on August 1, 1929, or thereabouts?

Mr. CLARKE. Of course.

Mr. PECORA. Do you think that Mr. Keller would be able to enlighten us specifically as to which bank this deposit is carried in?

Mr. KELLER. I have no information on that, Mr. Pecora.

Mr. PECORA. Would it be possible for you to find out, Mr. Keller, from any records available to you?

Mr. KELLER. No, I do not have that. I do not believe I could find that out.

Mr. PECORA. Mr. Clarke, is this account an active account of yours?

Mr. CLARKE. Oh, yes.

Mr. PECORA. Now, who is Mr. H. E. Van Duyne?

Mr. CLARKE. H. E. Van Duyne lives in Los Angeles, Calif.

Mr. PECORA. Well, who is he? [After a pause.] Who is he, Mr. Clarke?

Mr. CLARKE. He is a man who has been in the motion picture equipment business for many years.

Mr. PECORA. In business for himself in that field?

Mr. CLARKE. He was; yes, for many, many years; but is not now.

Mr. PECORA. What did he do for this commission of $100,000? What service did he render?

Mr. CLARKE. He negotiated for the acquisition of the Ashcraft Automatic Arc Co. and the Mitchell Camera Co.

Mr. PECORA. At your request?

Mr. CLARKE. Yes. Mr. Van Duyne was formerly president and owned the Pacific Amusement Co.

Mr. PECORA. Where is that located?

Mr. CLARKE. In Los Angeles.

Mr. PECORA. Has he always been in business there since you have known him?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Where was the Mitchell Camera Co. located?

Mr. CLARKE. In Los Angeles.

Mr. PECORA. Where was the Ashcraft Automatic Arc Co. located?

Mr. CLARKE. At Los Angeles.

Mr. PECORA. Did you have any contract in writing with Mr. Van Duyne whereby he for a commission was to act as agent or broker for you in the acquisition of the assets of the Ashcraft and Mitchell companies?

Mr. CLARKE. I had an exchange of letters with him for it.

Mr. PECORA. Did he render all the services that enabled you to acquire the assets of those two companies?

Mr. CLARKE. No; he did not.

Mr. PECORA. Did anyone assist him?

Mr. CLARKE. Yes.

Mr. PECORA. Who?

Mr. CLARKE. I forget the man's name for the moment. He claimed a commission, and was settled with for an amount which I do not now remember either. That was the reason that there was a dispute.

Mr. PECORA. For value received he claimed whatever commisions he claimed, did he?

Mr. CLARKE. Yes; that is right—no; I don't know that he received whatever he claimed.

Mr. PECORA. Well, he received whatever amount was arrived at by way of adjustment of settlement of his claim, is that it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. In the letters that you have in the exchange of correspondence that you had with Mr. Van Duyne, was reference made to the amount of commission that he was to receive from you for his brokerage services?

Mr. CLARKE. Yes; in percentage, I think.

Mr. PECORA. What was the percentage rate?

Mr. CLARKE. I think it was based on if he obtained it at a certain price that he was to get so much commission, and at another price it was to be so much commission, but I don't recall.

Mr. PECORA. Was Mr. Van Duyne by any chance a stockholder or other party in interest of the Mitchell Camera Co.?

Mr. CLARKE. I think not.

Mr. PECORA. Was he of the Ashcraft Co.?

Mr. CLARKE. I think not.

Mr. PECORA. Was there any arrangement between you and Mr. Van Duyne for any division of his brokerage fees or commissions with you?

Mr. CLARKE. No, sir.

Mr. PECORA. Now, have those records come here as yet?

Mr. CLARKE. I haven't been advised of it yet.

Mr. PECORA. Will you ascertain?

Mr. CLARKE. Mr. Keller has been advised that they are coming down on a train due here at 11:50 a.m.

Mr. PECORA. All right. Meanwhile I will suspend the examination of this witness and ask Mr. Dodge to resume the stand. And, Mr. Clarke, will you be good enough to let me know when those records arrive?

Mr. CLARKE. Certainly.

(Thereupon the witness Clarke temporarily left the committee table.)

The CHAIRMAN. Come around, Mr. Dodge.

TESTIMONY OF MURRAY W. DODGE—Resumed

The CHAIRMAN. You have heretofore been sworn, have you, Mr. Dodge?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Dodge, were you in attendance before the subcommittee on yesterday while Mr. Harley L. Clarke, the witness who has just vacated the stand, gave testimony?

Mr. DODGE. Yes, sir.

Mr. PECORA. Did you hear the testimony given by him here this morning?

Mr. DODGE. Yes, sir.

Mr. PECORA. And did you hear his testimony given here on yesterday?

Mr. DODGE. Yes, sir.

Mr. PECORA. Do you recall that among other things Mr. Harley Clarke testified yesterday, in substance, that the agreement dated July 9, 1929, which is in evidence as Committee Exhibit No. 133, was arrived at between the parties thereto after a series of conferences and negotiations which had lasted for a period of two or more months?

Mr. DODGE. Yes, sir; I heard that.

Mr. PECORA. Now, as far as you know, was that testimony correct?

Mr. DODGE. Not quite as long as that, I don't think.

Mr. PECORA. Now, you at that time were connected in some capacity with Chase Securities Corporation, weren't you?

Mr. DODGE. Yes, sir.

Mr. PECORA. And in what capacity?

Mr. DODGE. As a vice president.

Mr. PECORA. And you are still connected with it?

Mr. DODGE. No, sir.

Mr. PECORA. Well, you are connected with the Chase Corporation?

Mr. DODGE. No, sir.

Mr. PECORA. When did you sever your relations with it?

Mr. DODGE. In May of 1933.

Mr. PECORA. In May of this year?

Mr. DODGE. Yes, sir.

Mr. PECORA. The Chase Securities Corporation was one of the parties to this agreement of July 9, 1929, to your knowledge?

Mr. DODGE. Yes, sir.

Mr. PECORA. In the conferences and the negotiations that led to the making of this agreement did you participate as an officer or representative of the Chase Securities Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. Were there any other officers or representatives of the Chase Securities Corporation also present in those conferences and negotiations?

Mr. DODGE. I do not believe so.

Mr. PECORA. Do you know anything concerning the facts and circumstances under which, according to the testimony of Mr. Clarke, he paid the sum of $2,000,000 to Mr. William Fox in connection with the acquisition of assets originally of the Mitchell Camera Co.?

Mr. DODGE. My understanding at the time was that Mr. Fox was to have a half interest in the Grandeur, Inc.

Mr. PECORA. Was he to pay for that half interest?

Mr. DODGE. I don't know how the arrangements were made. All I know is that there was a certain amount of money to be paid to the Grandeur, Inc., which in turn was to own the Mitchell Camera Co.

Mr. PECORA. And all of those things were discussed in the conferences that preceded the execution of this contract on July 9, 1929?

Mr. DODGE. The value of the Grandeur, Inc., after it had acquired the assets of the Mitchell Camera Co. and whatever rights and patents accrued from the International Projector Corporation and whatever rights Mr. William Fox or whatever the patents he might claim, were to be owned by the Grandeur, Inc.

Mr. PECORA. In those conferences was anything said concerning anything that Mr. Fox owned which was to be acquired by the Grandeur Corporation for the ultimate benefit of the General Theatres Equipment, Inc.?

Mr. DODGE. Mr. Pecora, I can only remember that in a general way. I remember that there were discussions by Mr. Clarke; that Mr. Fox had made certain claims both to the prior right to acquire the Mitchell Camera Co., whether it was through an option or not I do not know, and a general settlement had been arrived at by Mr. Clarke; in addition to Mr. Clarke's having acquired this half interest in Grandeur, Inc., there also was a contract entered into with Mr. Fox or with the Fox Film and the Fox Theatres Corporation to purchase a considerable number of the new Grandeur projecting machines.

Mr. PECORA. Have you a copy of that contract?

Mr. DODGE. I don't know whether we have or not. [After conferring with associate:] I am informed that there is a contract between the Grandeur, Inc., and the Fox Theatres. [Aside to an

associate:] The Fox Film also? [After a pause.] And the Fox Theatres—dated June 24.

Mr. PECORA. 1929?

Mr. DODGE. 1929.

Mr. PECORA. What is the general substance of that contract?

Mr. DODGE. I have not read that contract, Mr. Pecora. I have just received it. We just received that from New York.

Mr. PECORA. So far as you were familiar or became familiar through the medium of these conferences and negotiations that preceded the contract of July 9, 1929, what was the Grandeur Co. or the General Theatres Equipment, Inc., to acquire from Mr. Fox?

Mr. DODGE. Whatever rights he had or patents that he claimed to have in either the Mitchell Camera Co. or the Grandeur, Inc.

Mr. PECORA. Was Mr. Fox a participant in any of those conferences and negotiations?

Mr. DODGE. No, sir.

Mr. PECORA. Well, who brought up the subject of Mr. Fox having anything by way of rights, claims, property interests of any kind?

Mr. DODGE. Mr. Clarke.

Mr. PECORA. Mr. Clarke did. What did he say about it?

Mr. DODGE. In a general way, as I say, he told us that it was very essential to the business of the General Theatres Equipment that they should own 50 percent of the Grandeur, Inc., because in turn the Grandeur, Inc., would enter into a contract, with the approval of Mr. Fox, with the Fox Theatres Co.—I thought it was with the Fox Film also, but I am told it was not—the Fox Theatres Co. for the purchase of these projecting machines, which had been patented by the International Projector Corporation. That of course meant business for the International Projector Corporation and additional profits.

Mr. PECORA. Have you a copy of that contract here?

Mr. HAGEN. Which one do you mean?

Mr. PECORA. Made with Fox or any interest or representatives of Fox.

Mr. HAGEN. Yes; I have a contract between Grandeur and Fox Theatres.

Mr. PECORA. May I have it?

Mr. DODGE. I have not looked at it myself.

Mr. PECORA. Will you look at it now while you have it in your hand?

Mr. DODGE. Yes. Look at the whole of it or just a portion?

Mr. PECORA. Will you read enough of it to indicate whether it represents the agreement or refers to the transaction that you told us was discussed in these conferences with Mr. Clarke prior to July 9, 1929?

Mr. DODGE. I will try and do it as soon as I can.

(The witness proceeded to peruse the document.)

Mr. MUDGE. Mr. Pecora, do you want to look at this extra copy [handing document to Mr. Pecora]?

Mr. PECORA. Thank you, sir.

(The witness concluded perusal of the document.)

Mr. DODGE. I think that should be of great interest in connection with this whole investigation. It is a long document, but it goes

clearly into an agreement with Mr. Fox, both for the Fox Theatres Co. and the Fox Film Co., in the purchase of the Grandeur machinery.

Mr. PECORA. Mr. Mudge was kind enough to supply me with a copy of it, which I am now reading.

Mr. DODGE. It goes into it.

The CHAIRMAN. Mr. Dodge, may I ask you as a matter of information and for this record what has happened to the General Theatres?

Mr. DODGE. General Theatres is in the hands of a receiver.

The CHAIRMAN. What has happened to Pynchon & Co.?

Mr. DODGE. They also went into the hands of the receiver.

The CHAIRMAN. What happened to West & Co.?

Mr. DODGE. That also is in the hands of receivers.

The CHAIRMAN. What happened to Hammons?

Mr. DODGE. I understand that Hammons & Co. as formed at the time that we were discussing here—I don't know whether they are in liquidation or not.

The CHAIRMAN. And Fox Theatres and Fox Film?

Mr. DODGE. Fox Theatres, I understand, is in the hands of a receiver. Fox Film is not.

The CHAIRMAN. There has been considerable wreckage all along the line then?

Mr. DODGE. It seems to be so, sir.

Mr. MUDGE. Mr. Pecora, there is another agreement here that you might like to look at.

Mr. PECORA. I would like to look at it. Go ahead and look at it.

Mr. DODGE. It is all right. [Handing document to Mr. Pecora.] It is between the Grandeur, Inc., and the International Projector Corporation.

(Mr. Pecora perused the document handed to him.)

Mr. PECORA. Now, Mr. Dodge, there have been handed to me in the course of your examination what purports to be copies of two certain contracts, one made by and between Grandeur, Inc., a New York corporation, and International Projector Corporation, a Delaware Corporation, dated June 24, 1929, and the other one made by and between Grandeur, Inc., a New York corporation, and Fox Theatres Corporation, a New York corporation, also dated June 24, 1929.

Will you please look at them and tell me if these copies are true and correct copies of such agreements or contracts?

Mr. DODGE (after examining documents). This one I have before me is an original, and I have no reason to believe that it is not accurate.

Mr. PECORA. I do not care to assume responsibility for the original. If you will look at the copies and verify the copies, if you can, as true and correct copies, that will satisfy our purposes.

Mr. DODGE. I have no reason to believe it is not a true copy. It was supplied to us from the files of the International Projector Corporation.

Mr. PECORA. Yes. Now I offer these two instruments in evidence.

The CHAIRMAN. Let them be admitted and entered on the record.

Mr. PECORA. I ask that they be shown in the order in which I have made reference to them; that is to say, the first one being a contract by and between Grandeur, Inc. and International Projector Corporation, dated June 24, 1929, and the next one by and between Grandeur, Inc., and Fox Theatres Corporation, bearing the same date.

(Agreement by and between Grandeur, Inc. and International Projector Corporation, dated June 24, 1929, was thereupon designated "Committee Exhibit No. 136, November 17, 1933," and appears in full on page 3496.)

(Agreement by and between Grandeur, Inc., and Fox Theatres Corporation, dated June 24, 1929, was thereupon designated "Committee Exhibit No. 137, November 17, 1933," and the same appears in full on page 3497.)

Mr. PECORA. Mr. Dodge, do you know why 2 million dollars was paid to William Fox by Mr. Clarke, as he testified to such agreement this morning and yesterday?

Mr. DODGE. My memory is, Mr. Pecora, that, as I said before, it was paid in settlement of certain claims which Mr. Fox had or said that he had in the ownership or the right to purchase the Mitchell Camera Co., which was the only camera company which could manufacture the cameras to take these wide films which were to be manufactured by the Grandeur, Inc., and certain other patents for sound, and included in that was this contract.

Mr. PECORA. By this contract do you mean the last two contracts offered in evidence, Committee Exhibits Nos. 136 and 137?

Mr. DODGE. I should say the contract in particular between the Fox Theatres and the Grandeur, Inc., in which they received not entirely an exclusive contract, as you will notice from that, but what might be called a preferential contract to purchase these machines. As I remember the story at the time, Mr. Fox felt that this wide screen or wide picture——

Mr. PECORA (Interposing). Wide film?

Mr. DODGE. Wide film—would be as revolutionary as sound, and he was using every endeavor that he could to obtain the preferential rights to take the pictures to supply the demand that he felt would come from the showing, and this was a contract with the Grandeur, Inc., of which he—my impression, if I might say, was that he did not own personally the 50 percent. I thought that it was owned by the Fox interests, but I found later that it was Mr. Fox himself, I believe, that owned 50 percent. At any rate, he caused the contract to be entered into with the Fox Theatres.

Mr. PECORA. In these conferences that preceded the making of the contract of July 9, 1929, which is known as "Exhibit No. 135" in this investigation, Mr. Fox was represented by Clarke?

Mr. DODGE. No.

Mr. PECORA. Was he represented by anybody?

Mr. DODGE. He had nobody there; no.

Mr. PECORA. And he was not a participant at the conferences in any way, shape, or form?

Mr. DODGE. No, sir.

Mr. PECORA. And not a party in any way, shape, or form to the agreement of July 9, 1929?

Mr. DODGE. No, sir.

Mr. PECORA. Well, under what agreement was this $2,000,000 paid to Fox?
Mr. DODGE. I don't know.
Mr. PECORA. You don't know?
Mr. DODGE. No. It was between Mr. Clarke and Mr. Fox.
Mr. PECORA. But wasn't that money to come, ultimately, out of the General Theatres Equipment?
Mr. DODGE. Yes, sir.
Mr. PECORA. And you were the vice president of one of the bankers in the banking syndicate that financed General Theatres Equipment?
Mr. DODGE. All we were interested in under that contract was that the General Theatres Equipment would own 50 percent of the Grandeur, Inc., which in turn would own the Mitchell Camera Co. and whatever patents or assignment of rights that there were; and how that was obtained was up to the lawyers.
Mr. PECORA. At these conferences it was discussed and eventually agreed upon that a corporation, to be called the General Theatres Equipment, Inc., was to be organized as a holding company?
Mr. DODGE. Yes, sir.
Mr. PECORA. And that corporation or, in other words, that holding company was designed to take over, among other things, the stock of the International Projector Corporation, was it not?
Mr. DODGE. Yes, sir.
Mr. PECORA. Also to take over 50 percent of the capital stock of Grandeur, Inc.?
Mr. DODGE. Yes, sir.
Mr. PECORA. Wasn't it also agreed eventually, as a result of these conferences, that the General Theatres Equipment or the interests they had agreed would organize the General Theatres Equipment was to also cause to be organized another corporation, called Grandeur, Inc., for the purpose of enabling the latter corporation to acquire the assets of another company, called the Mitchell Camera Co.?
Mr. DODGE. Well, that is what I mean when I testify that the General Theatres Equipment was to purchase a half interest in the Grandeur, Inc., and I believe it was set out in that contract exactly what the Grandeur, Inc., was to be, was it not? That is my memory.
Mr. PECORA. I will tell you what the contract sets out in that respect. I will read from Committee Exhibit No. 135 as follows [reading]:

> Grandeur, Inc., a corporation of the State of New York, 50 percent of the capital stock of which is to be acquired by the General Theatres Equipment, Inc., will acquire all of the common stock of Mitchell Camera Corporation, a corporation to be organized under the laws of the State of Delaware, which latter corporation will acquire all of the property, business, and assets of the Mitchell Camera Co., a corporation organized and existing under the laws of the State of California, together with the land in Los Angeles, Calif., that has been acquired, the buildings being erected thereon, and the machinery and equipment to be installed thereon, for the corporation to be organized under the laws of the State of Delaware, as aforesaid.

Now, from that provision in this contract, Mr. Dodge, it would seem that the sponsors or organizers of General Theatres Equipment, Inc., of which the Chase Securities Corporation was one, were desirous of acquiring in some form or other all of the property,

business, and assets of another company called the Mitchell Camera Co., which was then organized and existing under the laws of the State of California. Is that right?

Mr. DODGE. That would seem to be so.

Mr. PECORA. Yes. Now, in order to enable the General Theatres Equipment, Inc., to acquire those interests of the Mitchell Camera Co., the California corporation, apparently the sponsors of the General Theatres Equipment Co., devised this method of enabling them to acquire those assets of the Mitchell Camera Co. First, there was to be another company organized, to be called the Mitchell Camera Corporation. That was to be organized under the laws of the State of Delaware. That was the first step. Is that right?

Mr. DODGE. Yes.

Mr. PECORA. Then the Mitchell Camera Corporation, the Delaware corporation, was to acquire all of the property, business, and assets of the Mitchell Camera Co. of California. That was the second step, wasn't it?

Mr. DODGE. I presume so.

Mr. PECORA. And then the next step was to be the incorporation of another corporation to be called "Grandeur, Inc.", and which was to be organized under the laws of the State of New York, and Grandeur, Inc., was to acquire the common stock of the Mitchell Camera Corporation after that corporation had acquired the assets of the Mitchell Camera Co. of California. Is that right?

Mr. DODGE. I presume so, Mr. Pecora. That is all a question of legality.

Mr. PECORA. Then the fourth step was to be for the General Theatres Equipment, Inc., to acquire 50 percent of the common capital stock of the Grandeur, Inc. Is that right?

Mr. DODGE. That would seem to be right.

Mr. PECORA. Well, why was that circuitous route adopted to enable the General Theatres Equipment to acquire any interest in the Mitchell Camera Co.?

Mr. DODGE. I don't know, Mr. Pecora.

Mr. PECORA. Now, you participated as an experienced banker in the conferences that were had by and between the organizers of General Theatres Equipment, did you not?

Mr. DODGE. Yes, sir.

Mr. PECORA. You were a party, your corporation, the one that you represented in these conferences, namely, the Chase Securities Corporation, was a party to this agreement of July 9, 1929, under which General Theatres Equipment was organized. Why don't you know why the things that were done were done in that fashion?

Mr. DODGE. I only know and only knew at the time that when the General Theatres Equipment, Inc., was incorporated and before any securities were purchased by the bank, that it was to own 50 percent of the Grandeur, Inc., which was to be formed, which in turn would own the Mitchell Camera Co. Now, how that was to be carried out legally, not being a lawyer, I did not know, but I did want the opinion of my lawyers before we paid for them.

Mr. PECORA. Now, you actually executed this agreement of July 9, 1929, in behalf of the Chase Securities Corporation as its vice president, did you not?

Mr. DODGE. Yes, sir.

Mr. PECORA. I presume you were guided by legal advice furnished to you or to your company before you actually executed this agreement in behalf of the Chase Securities Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. And who gave you such legal guidance and advice?

Mr. DODGE. Messrs. Rushmore, Bisbee & Stern.

Mr. PECORA. Which particular individual or individuals of that firm?

Mr. DODGE (after conferring with associates). It was Mr. Van Ness.

Mr. PECORA. Weren't you, at some time or other before you signed this agreement in behalf of the Chase Securities Corporation, informed or enlightened with regard to the substance of this agreement, the contents of it?

Mr. DODGE. Certainly.

Mr. PECORA. On whose suggestion were these provisions incorporated in this agreement providing for this circuitous method by which General Theatres Equipment, Inc., was to acquire any interest whatsoever in the Mitchell Camera Co. of California?

Mr. DODGE. I presume the lawyers, and I presume it was the lawyers for the General Theatres or for the International Projector or Mr. Clarke's lawyers whoever it was that we were negotiating for the securities with.

Mr. PECORA. Do you know any reason why the General Theatres Equipment, Inc., could not have arranged in this agreement to acquire directly from the Mitchell Camera Co. its property and assets which it desired to acquire?

Mr. DODGE. I do not, Mr. Pecora.

Mr. PECORA. What reason was given by anybody for providing and adopting the method which was adopted to enable the General Theatres Equipment to acquire those assets?

Mr. DODGE. I haven't the slightest recollection of any such thing.

The CHAIRMAN. Do you know, Mr. Dodge, whether the stock of the Mitchell Camera, Inc., of California and the Mitchell Camera Corporation and of the Grandeur Co., whether stock in these different organizations was offered and sold to the public?

Mr. DODGE. No, sir, none of them were. They were acquired by the General Theatres Equipment.

The CHAIRMAN. And they all sold stock to the public?

Mr. DODGE. The General Theatres Equipment stock was offered to the public; yes, sir.

Mr. PECORA. Do you know any reason why Grandeur, Inc., could not directly have acquired for the benefit of General Theatres Equipment the stock, assets, and property of the Mitchell Camera Co., directly, without the intervention of another corporation to be organized under the laws of the State of Delaware and to be called the Mitchell Camera Corporation?

Mr. DODGE. I do not even know whether the Mitchell Camera Corporation of California was a partnership or what kind of a corporation it was.

Mr. PECORA. There was no Mitchell Camera Corporation of California. The California corporation was called the Mitchell Camera Co., but the Mitchell Camera Corporation was to be organized ac-

cording to this agreement under the laws of the State of Delaware to acquire the assets and property of the Mitchell Camera Co. of California, and then the Mitchell Camera Corporation of Delaware in turn was to turn over those assets to the Grandeur, Inc., which in turn was to sell 50 percent of its stock to General Theatres Equipment, Inc.

Mr. DODGE. It would be a question for the lawyers to answer, Mr. Pecora. I really do not know. All I was interested in, as I said, as a banker, was that General Theatres acquired 50 percent of the Grandeur, Inc., which in turn owned the Mitchell Camera Co.

Mr. PECORA. Yes. Now, was it the purpose of the General Theatres Equipment or its sponsors to acquire only a half interest in the property and the assets of the Mitchell Camera Co., of California?

Mr. DODGE. No, sir; a half interest in the Grandeur, Inc.

Mr. PECORA. But by acquiring a half interest in the Grandeur the General Theatres Equipment really acquired only a half interest, or what was the equivalent of a half interest, in the Mitchell Camera Co. of California, did it not?

Mr. DODGE. I don't so understand it.

Mr. PECORA. Well, all of the assets of the Mitchell Camera Co. of California were first acquired by the Mitchell Camera Corporation of Delaware, which then turned them over to the Grandeur Co. That put the Grandeur Co. in possession and ownership of all the assets of the Mitchell Camera Co. of California.

Mr. DODGE. That is right.

Mr. PECORA. By the General Theatres Equipment acquiring only 50 percent of the stock of Grandeur, it virtually only acquired the equivalent of 50 percent of the assets of Grandeur, which consisted originally of the assets of the Mitchell Camera Co., did it not?

Mr. DODGE. I would not think so, Mr. Pecora. I would think as to that that they owned 50 percent of the company that owned a 100 percent of the Mitchell Camera Co.

Mr. PECORA. Exactly, but that was in effect giving the General Theatres Equipment an interest that amounted to 50 percent of the Mitchell Camera Co.'s assets, original assets?

Mr. DODGE. It owned 50 percent of any of the assets which were owned by the Grandeur, Inc., whether it was the Mitchell Camera Co. or anything else.

Mr. PECORA. Was it the purpose of the sponsors of the General Theatres Equipment not to acquire outright all of the assets originally owned by the Mitchell Camera Co. of California?

Mr. DODGE. You mean the General Equipment to acquire that direct?

Mr. PECORA. Yes, or to acquire all of those assets, either directly or indirectly?

Mr. DODGE. No. As I understand it, those assets were to be owned by the Grandeur, Inc.

Mr. PECORA. And all of that was in the contemplation of the sponsors of the General Theatres Equipment, Inc.?

Mr. DODGE. And those contracts will show that it was the Grandeur, Inc., which entered into a contract with the International Projector.

Mr. PECORA. Now, the Grandeur, Inc., was to be organized by those interested in organizing the General Theatres Equipment, Inc.?

Mr. DODGE. I didn't get that.

Mr. PECORA. Grandeur, Inc., was to be organized by the sponsors or persons interested in creating or organizing the General Theatres Equipment, Inc.?

Mr. DODGE. Well, it was to be organized by the General Theatres Equipment.

Mr. PECORA. Yes. And was so done?

Mr. DODGE. Yes, sir.

Mr. PECORA. The contract which has been marked "Committee's Exhibit No. 136" in evidence provides, among other things, as follows—it is rather short, so I am going to read the substance of it to you [reading]:

Witnesseth:

Whereas International——

(meaning International Projector Corporation)

has for more than 7 years last past experimented with, and has now developed, a special motion-picture projector, without lamp and lamp house, adapted for use in connection with so-called "Grandeur films" (films wider than the regular 35 millimeters); and

Whereas Grandeur is desirous of securing the exclusive right of handling and selling all such projectors manufactured by International adapted for use in connection with Grandeur films, and International is willing to grant such exclusive right, upon the terms and conditions hereinafter set forth;

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. International agrees that Grandeur shall have the exclusive distribution and sale for all such projectors manufactured by International adapted to the use of Grandeur films, and further agrees that during the period of this agreement it will not manufacture for, or sell, lease, license, or otherwise dispose of to any other person, firm, or corporation, nor permit any other person, firm, or corporation to sell, lease, license, or otherwise dispose of any such projectors or any improvements thereof, or any modifications thereof, or any other projector designed to use films wider than 35 millimeters prescribed and/or developed either directly or indirectly by or under the supervision of or for the benefit of International Projector Corporation, provided always that Grandeur shall use its best efforts to promote the sale and distribution of such projectors.

2. International agrees to manufacture and sell to Grandeur and Grandeur agrees to purchase from International all such projectors desired by Grandeur during the lifetime of this agreement for sale to Fox Film Corporation, Fox Theatres Corporation, and/or their subsidiary or affiliated companies or others upon the terms and conditions set forth.

3. For the first 12 of such projectors Grandeur shall pay International the sum of $6,000 for each of such projectors. For each projector in excess of the said 12 projectors hereinabove mentioned, Grandeur shall pay International $4,000 for each projector.

Deliveries shall commence on or before or as soon after February 1, 1930, as practicable.

4. This agreement shall remain in effect until June 1, 1939.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective proper officers on the day and date first above written.

GRANDEUR, INC.,
By JACK G. LEO, *President*.
INTERNATIONAL PROJECTOR CORPORATION,
By W. C. MICHEL, *Vice President*.

Now, you will observe, Mr. Dodge, from this agreement that I have just read that the International Projector was engaged in the business of manufacturing special motion-picture projectors adapted for use in connection with films having a width in excess of the regular width of films, which was then 35 millimeters.

Mr. DODGE. That is right.

Mr. Pecora. And that by this contract the International Projector Corporation bound itself to give the Grandeur Corporation the exclusive right to the distribution and sale of all such projectors so manufactured by the International?

Mr. Dodge. That is right.

Mr. Pecora. And for that right Grandeur agreed to pay to the International $6,000 for each of the first 12 of such projectors and $4,000 for any of such projectors in excess of 12 in number that the International manufactured and turned over to the Grandeur. Is that right?

Mr. Dodge. Yes, sir.

Mr. Pecora. And this contract was made for a period of about 10 years; that is to say, it was dated June 24, 1929, and it provided that it should remain in effect until June 1, 1939?

Mr. Dodge. That is right.

Mr. Pecora. Now, let me take up with you the second contract, marked "Exhibit No. 137", which is dated also on June 24, 1929, and which was made by and between Grandeur, Inc.; that is to say, the corporation that received this exclusive right to distribute and sell these special projectors in the contract that I have just read from, as licensor, and Fox Theatres Corporation, a New York corporation, hereinafter called Fox, as licensee. Let me read the following provisions of this agreement, Committee Exhibit No. 137, between the Grandeur Co. as licensor and the Fox Theatres Corporation as licensee (reading):

> 1. (a) Grandeur hereby grants to Fox a nonexclusive, nonassignable license to use in the theaters owned, controlled and/or operated by Fox, Fox Film Corporation and their respective subsidiary and/or affiliated companies—

and so forth.

Mr. Dodge. May I interrupt there? Does that refer to Fox Theatres or Fox personally?

Mr. Pecora. "Fox Theatres Corporation, a New York corporation, hereinafter called Fox."

Mr. Dodge. I beg your pardon. I did not get that.

Mr. Pecora. The word "Fox" is just simply an abbreviation for purposes of convenience.

Mr. Dodge. Yes, sir.

Mr. Pecora. Of the Fox Theatres Corporation, which was a New York corporation.

Mr. Dodge. Yes, sir.

Mr. Pecora. I will read it all. (Reading:)

> 1. (a) Grandeur here grants to Fox—meaning, of course, Fox Theatres Corporation.

Mr. Dodge. Yes.

Mr. Pecora (continuing reading):

> A nonexclusive, nonassignable license to use in the theaters owned, controlled and/or operated by Fox, Fox Film Corporation and their respective subsidiary and/or affiliated companies (subject to all the terms, conditions, limitations, and agreements herein contained) special motion-picture projectors, without lamp or lamphouse, adapted for use in connection with so-called "Grandeur" films (films wider than the regular 35 millimeter) in the quantities and at the times hereafter in this agreement provided and to employ and make use of (to the extent necessarily involved in such use of said projectors) any and all United States patents and applications for United States patents, relating to said

projectors or to such use thereof, which are now owned or controlled, or which may during the term of this agreement be owned or controlled by International Projector Corporation, or in respect of which International Projector Corporation has or may hereafter, during the term of this agreement, have the right to grant such licenses, Grandeur being the licensee of International Projector Corporation, with the right to assign such use of such patents.

Under that clause, Mr. Dodge, you have observed, have you not, that Grandeur, Inc., which was the corporation that the contract of July 9, 1929, provided was to be organized at the instance of and for the benefit of the General Theatres Equipment, Inc.——

Mr. DODGE (interposing). And Mr. Fox.

Mr. PECORA. What?

Mr. DODGE. Mr. Fox owned 50 percent of the Grandeur, Inc.

Mr. PECORA. Well, there is nothing in the contract of July 9, 1929, that relates in any way to Mr. Fox, is there?

Mr. DODGE. No, sir; but it does say that they will only own 50 percent.

Mr. PECORA. I have already alluded to that fact. Now I will go back to my question: Under this contract, or clause 1(a) of this contract, known as "Exhibit No. 137", this Grandeur Co., which had obtained on the same date from the International Projector Corporation under the agreement marked in evidence here as "Exhibit No. 136", the exclusive right to handle and sell these special projectors being manufactured under patents by it, by the International Projector Corporation, grants to the Fox Theatres Corporation a nonexclusive, nonassignable license to use in theaters owned or controlled by the Fox Theatres Corporation these same special motion-picture projectors of the International Projector Corporation?

Mr. DODGE. That is right, sir.

Mr. PECORA. Now let me read clause 1 (b) of this exhibit no. 137 [reading]:

(b) Grandeur agrees to install in such theaters of Fox, Fox Film Corporation and/or their subsidiary or affiliated companies that Fox may from time to time designate, 12 such special motion-picture projectors, for which Fox shall pay Grandeur on installation thereof the sum of $6,000.

I presume that that $6,000 payment is for each one of these 12 projectors, although this agreement does not so say?

Mr. DODGE. I would presume so.

Mr. PECORA. Further reading from clause 1 (b):

Grandeur agrees to supply to Fox, and Fox agrees to accept or cause to be accepted from Grandeur under the terms provided in this agreement, during the period commencing approximately February 1, 1930, but in any event as soon as projectors shall be ready for delivery, and ending 10 years thereafter, all motion-picture projectors using films wider than the regular 35 millimeter that may be required or desired by Fox, Fox Film Corporation and/or their subsidiary or affiliated companies during such period, it being the agreement of the parties hereto that Fox shall, during such period, use exclusively such projectors as are manufactured by International Projector Corporation. Where hereinafter referred to, Fox shall include not only Fox Theatres but also Fox Film Corporation and/or their subsidiary or affiliated companies.

Grandeur agrees that Fox shall have the first call on any such projectors that Grandeur is able to supply, and Grandeur agrees that so long as any orders for such projectors from Fox are unfilled that no orders for such projectors from others than Fox will be accepted except on the condition that such orders shall be accepted subject to prior deliveries for Fox as herein provided.

Now you understand the general intendment of that provision don't you, Mr. Dodge? In substance, it provides that Grandeur agrees to install and is to install in such theaters of Fox as Fox may desire from time to time for a period of 10 years, which is a period co-terminus with the period provided for in the exhibit no. 137 as the life of that contract, these special motion-picture projectors which were being manufactured by International Projector Corporation, and Fox was to pay $6,000 each for the first 12 of those projectors, those machines, and it further provides in substance that Fox shall have first call upon Grandeur for any of these special projectors.

It further provides that so long as there are any unfilled orders given by Fox to Grandeur, Grandeur shall not sell or supply or deliver any of those special projectors to any other concern, doesn't it?

Mr. Dodge. I would say so.

Mr. Pecora. Yes. Which may or may not be a monopolistic agreement. We won't say anything about that now.

The second clause of this agreement I will read to you, Mr. Dodge, and you please follow me [reading]:

> Fox agrees that it will use and employ the projectors only in theaters owned controlled, or operated by Fox, and that it will at all times during the period of this license keep and maintain the projectors in good condition.

Well, that is easily understood. You understand that.

Third clause:

> Grandeur agrees to make periodical inspection and minor adjustments in the projectors after they shall have been installed. Grandeur may from time to time install such spare and renewal parts as may, in its opinion, be necessary to the satisfactory operation and maintenance of the projectors.
>
> 4. For each such projector in excess of the twelve (12) projectors mentioned in paragraph 1 (b) hereof, Fox agrees to pay to Grandeur in New York Exchange an installation charge of four thousand dollars ($4,000) for each such projector, payable upon the shipment of each such projector and the further payments hereinafter provided. In the event that the established installation charge made by Grandeur for such projectors is less than $4,000 at any time during the life of this contract, Fox shall be given the benefit of any such decreased charge from the effective date thereof.

There is no doubt as to the meaning of that in your mind, is there?

Mr. Dodge. No.

Mr. Pecora. Now, I want to call your attention especially to the next clause, which is no. 5 in this contract, and which reads as follows [reading]:

> In addition to any other payments required to be made by Fox hereunder, Fox agrees to pay to Grandeur throughout the term of the license hereby granted, a monthly payment of $175,000 in advance.

Mr. Mudge. $175.

Mr. Hagen. $175 a month.

Mr. Mudge. It is zero one hundred, no cents.

Mr. Pecora. Well, as I see that in this copy, the figures are dollar sign one hundred seventy-five, comma——

Mr. Mudge. Zero.

Mr. Pecora. Three zeros, an oblique line, then 100.

Mr. Hagen. The original contract shows $175 a month.

Mr. Pecora. Well, that one I don't know. $175,000—I would so read it. Wouldn't you, Senator Couzens?

Mr. MUDGE. Here is the original—monthly payment of dollar sign 175, zero, then two zeros and a line under it.

Senator COUZENS. You might take it either for 175,000 or 175,000,000.

Mr. PECORA. Certainly not $175.

Mr. MUDGE. There is the original

Mr. DODGE. Mr. Pecora, I take it for granted that that was a copy of this.

Mr. PECORA. You got me all excited.

Mr. MUDGE. I am sorry, but we did not make the copy. You better have that copy corrected if that is marked in evidence.

Mr. PECORA. The original clearly reads $175 in numerals, but the copy you gave me, Mr. Mudge, just as clearly reads $175,000.

Mr. MUDGE. Well, I am very sorry.

Mr. PECORA. Only the difference of one cipher.

Mr. DODGE. We did not have time to look them over, Mr. Pecora. They came in this morning.

The CHAIRMAN. Which is correct?

Mr. DODGE. The original is correct, Senator.

The CHAIRMAN. $175 per month?

Mr. DODGE. Yes, sir.

Mr. PECORA. I do not want to appear like a natural ignoramus. Will you look at the copy that I was furnished with and see how you would read that figure in clause 5. Just look at it, Mr. Dodge.

Mr. DODGE. I did see it, but I have not had time to read it over.

Mr. PECORA. Look at it now.

Mr. MUDGE. That could be almost anything.

Mr. PECORA. Oh, no; it could not be almost anything.

Senator GOLDSBOROUGH. That is more than 175,000, is it not?

Mr. DODGE. Yes; that could be almost anything.

Mr. PECORA. As you would read it, what would you say it was, if you had no knowledge of the contents of the original?

Mr. DODGE. I would say exactly what you said, Mr. Pecora. I would say $175,000 a monthly payment; yes. That is what it would be.

Mr. PECORA. All right. I feel happier.

Mr. DODGE. Sorry.

Mr. PECORA. I had better leave that copy out of the way for the time being and be guided by the original. Put it aside. I don't want to make any more references to it. [Continues reading:]

"Such payments"—I am reading further from clause 5.

Senator COUZENS. Of the original this time?

Mr. PECORA. The original this time, or duplicate original.

> Such payments shall continue for 120 months for each projector. Such monthly payment to be made by Fox to Grandeur, however, shall never be in excess of the amount in effect as the established monthly payment at the time when such monthly payment is due. The first six machines furnished, however, shall be free from such monthly payment.

Was this monthly payment of $175 fixed for each projector furnished to Fox by Grandeur?

Mr. DODGE. I understand so.

Mr. PECORA. The contract does not say definitely on that either.

Mr. DODGE. It is a service charge. I believe it is a service charge.

The CHAIRMAN. It did not apply to the first six?

Mr. DODGE. No, sir; because I understand from that that the cost of the first six was $6,000 and the others were $4,000.

Mr. PECORA. The International Projector Corporation, which was a party to the contract marked "Exhibit No. 136" in evidence here, is also a corporation that was to be wholly owned or acquired by General Theatres Equipment, according to the contemplation of the sponsors or creators of General Theatres Equipment?

Mr. DODGE. Yes, sir.

Mr. PECORA. Why was Grandeur, Inc., set up between the International Projector Corporation, which manufactured these special motion-picture projectors, and any users or customers that might be in the market for the use or purchase of those special projectors?

Mr. DODGE. If I understand your question correctly, Mr. Pecora, I would answer it this way, that the General Theatres Equipment was only to own 50 percent of Grandeur, Inc.

Mr. PECORA. But the General Theatres was to own all of International Projector Corporation?

Mr. DODGE. That is right.

Mr. PECORA. And the International Projector Corporation, under patents that it had, were manufacturing these special projectors, were they not?

Mr. DODGE. Yes.

Mr. PECORA. If the General Theatres Equipment was, in the contemplation of its organizers, to acquire all of the stock of International Projector Corporation, why did those same sponsors cause to be created and set up the Grandeur, Inc., as a corporation to acquire the exclusive right to sell and distribute these special projectors of International Projector Corporation?

Mr. DODGE. The benefit of those contracts was to go to the International Projector Corporation, who were to manufacture and sell presumably at a profit, projecting machines. The projecting machines were of no value unless there was a camera which could take the pictures, which would synchronize with the projecting machine and the Grandeur, Inc., purchased the Camera Co., which could produce the cameras.

So that in that way they had all, or it was presumed they would have all, of the company which was producing the projecting machine, and they would have a 50 percent interest in the Camera Co. that was taking the pictures.

Mr. PECORA. But under this agreement marked "Exhibit No. 136" the International Projector Corporation granted to the Grandeur Corporation the exclusive right for 10 years from June 1929 to handle and sell all of these special projectors that were manufactured by the International?

Mr. DODGE. That is right. They were to handle them; not to manufacture, but to handle.

Mr. PECORA. The International reserved the right of manufacture and had that right under its patent?

Mr. DODGE. Yes.

Mr. PECORA. But it gave the exclusive right to sell and handle those projectors to the Grandeur Co.?

Mr. Dodge. Yes, sir.

Mr. Pecora. Now the Grandeur Co. was to sell only 50 percent of its stock to the General Theatres Equipment?

Mr. Dodge. Yes, sir.

Mr. Pecora. So that any profits that accrued to the Grandeur Co. from the exclusive right that it received under this contract marked "Exhibit No. 136" would be divided equally between General Theatres Equipment as owner of 50 percent of the stock and whoever owned the other 50 percent of Grandeur?

Mr. Dodge. That is correct.

Mr. Pecora. That is correct. All of that was in contemplation of the sponsors of General Theatres Equipment?

Mr. Dodge. Yes, sir.

Mr. Pecora. Now, this right to the exclusive use and handling and this right to the exclusive handling and sale of these special projectors which Grandeur acquired directly from the International Projector Corporation under this agreement marked "Exhibit No. 136" was a valuable right commercially, was it not?

Mr. Dodge. We thought so, sir, at the time.

Mr. Pecora. And it has proved to be, has it?

Mr. Dodge. No, sir.

Mr. Pecora. But you thought it was going to be quite a valuable right?

Mr. Dodge. Yes, sir.

Mr. Pecora. Well then, if you thought so, and if the International Projector, which had the patents to manufacture these projectors, was to be acquired wholly by the General Theatres, why in the world did the sponsors of the General Theatres Equipment devise an arrangement whereby only half of the profits would accrue from the exclusive sale and handling of those projectors manufactured by the International were to go to the stockholders of General Theatres Equipment? Why was it done that way, Mr. Dodge?

Mr. Dodge. You have not yet brought into the testimony, if I may be permitted to say it, the other owner.

Mr. Pecora. Who was the other owner?

Mr. Dodge. It was William Fox or his interest. William Fox owned I don't know how many theaters; I think 500 possibly, throughout the country.

Mr. Pecora. Yes.

Mr. Dodge. I think he was the largest owner of theaters at the time. The projecting machines were to be sold to theaters.

Mr. Pecora. Yes.

Mr. Dodge. And the quickest way for the International Projector Co. to get its projectors sold to the theaters was through somebody who would be willing to buy them, and Mr. Fox was in control of the company and was willing and anxious to buy them.

Mr. Pecora. In control of what company?

Mr. Dodge. Of the Fox Theatres.

Mr. Pecora. Of the Fox Co.?

Mr. Dodge. Fox Theatres, and was willing to buy and was anxious to buy at that time.

Mr. Pecora. Well, if he was anxious to buy he was anxious, I presume, because he regarded this special projector as a device far in advance of anything that was in the field then to compete with it?

Mr. Dodge. Correct.

Mr. Pecora. Then shouldn't he have been willing to pay for that advantage in behalf of his own theaters?

Mr. Dodge. Under this contract he was.

Mr. Pecora. Under any arrangement whereby he could acquire the right to use that special projector?

Mr. Dodge. Under that contract I understand the theaters were to pay.

Mr. Pecora. His theaters were to pay, but he acquired in Grandeur Co. half of the stock in some way or other, did he not?

Mr. Dodge. Yes, sir.

Mr. Pecora. And the Grandeur Co. got from the International the exclusive right to sell and handle all of these projectors?

Mr. Dodge. Yes, sir.

Mr. Pecora. And by Fox having a 50 percent interest in the Grandeur Co., he was put in the position, or his company, Fox Theatres Co., was put in the position where virtually they could have handled the exclusive use of this special projector that marked an advance over any other projector in the field?

Mr. Dodge. Up to all they wanted; yes.

Mr. Pecora. Up to all they wanted, and he could continue to want just enough to keep the International from supplying anybody else, could he not, under this agreement?

Mr. Dodge. Well, that is a question I don't know. But it was what you would call a preferential contract. That is what I would read from that.

Mr. Pecora. Well, that is rather a mild way of designating it, is it not, a preferential contract?

Mr. Dodge. Well, I don't know. It states it is a nonexclusive contract.

Mr. Pecora. Why was Fox permitted to acquire by the sponsors of General Theaters Equipment a half interest in the Grandeur Co. which was in turn the company that received from the International Projector the exclusive right to sell these special projectors? What advantages, in other words, did you, as one of the sponsors of General Theatres Equipment, think would flow to the stockholders of General Theatres Equipment from that arrangement with Grandeur and with Fox?

Mr. Dodge. If my memory serves me correctly, Mr. Pecora, Mr. Fox had heard about this projecting machine. He immediately set about to get his foot in the door as far as the camera was concerned knowing——

Mr. Pecora (interposing). With Harley Clarke's help?

Mr. Dodge. I don't know. I don't think so.

Mr. Pecora. Well, now, Mr. Clarke has been testifying here today and testified yesterday that he set out to acquire the Mitchell Camera Co. in behalf of the General Theatres.

Mr. Dodge. I think he found competition in Mr. Fox.

Mr. Pecora. Well, that is being said here for the first time, that he found competition with Mr. Fox.

Mr. DODGE. That is to the best of my memory he found competition with Mr. Fox.

Mr. PECORA. Who succeeded in this competition in acquiring the Mitchell Camera Co. stock and assets?

Mr. DODGE. I should think they both did, because a settlement was reached by which Mr. Fox owned 50 percent of the common stock.

Mr. PECORA. Of Grandeur?

Mr. DODGE. Of Grandeur.

Mr. PECORA. Were the sponsors of the General Theatres Equipment a party to any such agreement with Fox?

Mr. DODGE. I don't think so.

Mr. PECORA. Doesn't it look to you, to use the vernacular, as though somebody tried to get half of the so-called "gravy" for themselves and keep it away from the stockholders, the ultimate stockholders of the General Theatres Equipment?

Mr. DODGE. No, sir. I may add there that I think, refreshing my memory on that contract, that the so-called "gravy", or the profits, was going to go to the International Projector Co. from the sale of the machines. Mr. Fox probably, or the theaters, would have gotten some of it through using it.

Mr. PECORA. Just let us see if that is so. All that the International Projector Corporation was to get was what it was entitled to receive from the contract marked "Exhibit No. 136", was it not?

Mr. DODGE. That is right.

Mr. PECORA. And that was simply $6,000 each for the first 12 projectors installed or which it sold to Grandeur, and $4,000 for all such special projectors over and above 12 in number. But the Grandeur Co., which got the exclusive right to sell and handle those machines under this contract with International, we find according to the contract marked "Exhibit No. 137" was to receive those same units, $6,000, $4,000, respectively, for these machines, plus a monthly payment of $175 for each machine used by anyone that it sold or granted the right to the use of such machines to.

Mr. DODGE. It looks to me as though the only profit to the Grandeur Corporation would be in $175 a month.

Mr. PECORA. Which is not a mean profit, is it?

Mr. DODGE. No, sir.

Mr. PECORA. And that profit, only half of that profit under the agreement or arrangement which was effected here in July 1929, was to go to the stockholders of General Theatres Equipment?

Mr. DODGE. Half of it.

Mr. PECORA. The other half was to go to those who owned the capital stock of Grandeur?

Mr. DODGE. That is correct.

Mr. PECORA. And those owners of the other 50 percent of that stock were who?

Mr. DODGE. William Fox.

Mr. PECORA. Just William Fox—not Clarke?

Mr. DODGE. No, sir. Not that I know of.

Mr. PECORA. And you, as one of the sponsors representing the Chase Securities Corporation for General Theatres Equipment, according to the arrangement——

Mr. DODGE. Yes, sir.

Mr. PECORA. Did you have any stock in Grandeur, Inc., at any time?

Mr. DODGE. No, sir.

Mr. PECORA. Did you have any stock in the International Projector Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. How much of it?

Mr. DODGE. Oh, I think my holdings at that time were between 20 and 25 thousand shares of the common stock.

Mr. PECORA. At the time that the stock of International Projector Corporation was exchanged for the stock of the General Theatres Equipment Co. I understand you owned 20,000 shares of the International Projector Corporation stock?

Mr. DODGE. At least that.

Mr. PECORA. And you received in exchange for that stock 25,000 shares of the General Theatres Equipment?

Mr. DODGE. Yes, sir.

Mr. PECORA. Which would be on a ratio or basis of one and one quarter shares of the latter for one share of the former?

Mr. DODGE. Right.

Mr. PECORA. How did you acquire those 20,000 shares of International Projector originally?

Mr. DODGE. Part of it was acquired at the formation of the company and part of it was acquired by personal investment in the market.

Mr. PECORA. How much of it did you acquire at the time of the formation of International Projector?

Mr. DODGE. I don't remember, Mr. Pecora. The Shermar Corporation had an interest in the original syndicate which put out the International Projector, and I had an interest in that.

Mr. PECORA. What consideration did you pay for that stock or the portion of it that you originally acquired?

Mr. DODGE. That was profit.

Mr. PECORA. That was what?

Mr. DODGE. A profit.

Mr. PECORA. Do you mean by that that you paid no consideration for it?

Mr. DODGE. Well, we originally paid for the commitment in the preferred stock of the International Projector Corporation and a certain amount of common stock.

Mr. PECORA. When you say "we", are you referring to someone other than yourself?

Mr. DODGE. I just testified that I had an interest with the Shermar Corporation in that purchase.

Mr. PECORA. What interest did the Shermar Corporation have? What was the extent of the Shermar Corporation's interest out of which you received the subparticipation?

Mr. DODGE. There were 25,000 shares of preferred stock of that company, as I remember it. [After conferring with associate.] I had a 25 percent interest.

Mr. PECORA. The Shermar Corporation did?

Mr. DODGE. Yes.

Mr. PECORA. In the purchase of the preferred stock issue of International——

Mr. DODGE. Projector, in 1925.

Mr. PECORA. Now, the total number of shares of preferred stock that International issued was 25,000, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the Shermar had a 25-percent interest in that?

Mr. DODGE. Yes, sir.

Mr. PECORA. And what interest of the Shermar's interest did you acquire?

Mr. DODGE. Eighteen percent.

Mr. PECORA. You don't mean 18 of the 25; you mean 18 percent of whatever interest the Shermar Corporation had?

Mr. DODGE. Eighteen of the 25 percent.

Mr. PECORA. Oh, 18 of the 25 percent?

Mr. DODGE. Yes.

Mr. PECORA. Not 18 percent of the whole?

Mr. DODGE. No, sir.

Mr. PECORA. Did you pay that 18 percent interest to the Shermar Corporation?

Mr. DODGE. I signed an agreement to buy.

Mr. PECORA. That had reference to the preferred stock. I am talking about the common stock. You had 20,000 shares of the common stock of the International at the time it was taken over on an exchange-of-stock basis by General Theatres. How did you acquire that common stock?

Mr. DODGE. As I remember the transaction, Mr. Pecora, I think I testified last Friday that the Shermar Corporation took an interest in this because the Chase Securities Co. did not consider it seasoned enough——

Mr. PECORA. I remember.

Mr. DODGE. In the original syndicate there were 25,000 shares of preferred stock and 75,000 shares of common stock.

Mr. PECORA. Was not that 75,000 shares of common really bonus stock?

Mr. DODGE. They were purchased together.

Mr. PECORA. Was it not really bonus stock? Let us be specific about it.

Mr. DODGE. If you want to call it that.

Mr. PECORA. I would call it that. Would you disagree with that designation of it?

Mr. DODGE. I do not think I should like to be allowed to put it on my books that way for tax purposes.

Mr. PECORA. Regardless of your preferences in that respect——

Mr. DODGE. It would not be my preference.

Mr. PECORA. Let us get right down to the A. B. C of it. Was it not bonus stock?

Mr. DODGE. I think it would be what you would call bonus stock.

Mr. PECORA. In order that you may have no misgivings about that, let me show you a photostatic copy of what purports to be a memorandum obtained by us from the office of Pynchon & Co., which,

referring to the International Projector Corporation, says among other things as follows—this is Committee's Exhibit No. 129 which was put in evidence on November 10:

Terms: Will be sold in the form of allotment certificate which allotment certificate will represent 1 share of preferred and 1 share of common. Balance of common stock will go as bonus, 37,500 shares to purchase group and 12,500 shares to syndicate.

Suppose you look at that exhibit and see if it enlightens you or refreshes your recollection in regard to any of the matters set forth.

Mr. Dodge (after examining the paper referred to). Thank you, Mr. Pecora, Pynchon & Co., from their records, evidently agree with you as to what you would call it. I do not know whether there is such a thing as bonus stock, but in common parlance I should think it would probably be correct. But there was so much preferred and so much common sold for so much money. The preferred and a certain part of the common stock was sold for so much money and the balance was a profit.

The Chairman. The committee will take a recess now until 2 o'clock.

(Whereupon, at 1:05 p.m., a recess was taken until 2 o'clock of the same day.)

AFTER RECESS

The subcommittee resumed at 2 p.m. on the expiration of the recess.

The Chairman. The subcommittee will come to order. Mr. Dodge, I believe, is on the stand.

TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. Pecora. Mr. Dodge, I was questioning you just prior to the recess today about the circumstances under which you had acquired 20,000 shares of the common stock of International Projector Corporation, which you owned when that stock was exchanged for 25,000 shares of General Theatres Equipment, Inc., stock. I do not believe you had fully told us what consideration you paid for those 20,000 shares, and how you acquired them.

Mr. Dodge. May I give it to you from memory?

Mr. Pecora. Surely.

Mr. Dodge. I haven't my books here.

Mr. Pecora. Give it the best way you can.

Mr. Dodge. As I was saying, the interest which the Shermar Corporation had in the original financing was 25 percent of 25,000 shares of stock——

Mr. Pecora (interposing). Twenty-five thousand shares of preferred stock?

Mr. Dodge. Of preferred stock, yes; with which went 75,000 shares of common, which, as I stated, was a purchase of two blocks together, and which, you stated, as to the common stock, was a bonus; and I did not enter into any argument with you about it. [Smiling.]

Mr. Pecora. All right.

Mr. Dodge. At any rate, Mr. Pecora, the Shermar Corporation was in that, not as a distributor of securities, as they had no way

of distributing securities, and therefore did not join in the purchase group, which purchased allotment certificates of preferred stock, which was 1 share of preferred and 1 share of common stock, at 93. The original purchase of preferred stock and the 75,000 shares of common was at 90, as you will remember, and accrued dividends. So that the profits to the Shermar Corporation were $3 a share in cash on that 25 percent interest and 25 percent of——

Mr. PECORA (interposing). Of 75,000 shares of common stock?

Mr. DODGE. No; of 50,000 shares of common—no; of 37,500 shares of common. There were 25,000 shares in the allotment certificates, and 12,500 shares—and I have refreshed my memory—were given with the purchase syndicate at 93. So that the original group got 37,500 shares as a profit and 25 percent of that was 9,377 shares of stock, I think. Is that correct? And my share of that was 18 percent. So that, roughly speaking, I acquired of the whole amount of stock of the International Projector Corporation 1,687 or 1,688 shares, whatever the amount was, of common stock as a profit.

Mr. PECORA. At the outset?

Mr. DODGE. At the outset in 1925. And with the split-up of 5 to 1 that would have been equivalent to somewhere around 8,450 shares of International Projector stock. The balance of the stock I purchased in the market at prices ranging, I imagine, from $10 to $15 a share for the old stock. I don't remember just what the amount was. It was done prior to 1928, as I remember, or prior to 1929.

Mr. PECORA. Did you actually pay anything for your participation of 18 percent in the interest which the Shermar Corporation had in the original group?

Mr. DODGE. The Shermar Corporation allotted to me an 18 percent interest through an exchange of letters, and I accepted the liability.

Mr. PECORA. You accepted a liability which you were never called upon to meet as events turned out?

Mr. DODGE. Correct; as events turned out.

Mr. PECORA. So as a matter of actual fact those eight thousand four hundred odd shares of common stock of International Projector Corporation which you acquired as a result of the split-up were acquired by you without the payment of a single dollar?

Mr. DODGE. Well, I can say that——

Mr. PECORA (interposing). Oh, you assumed a liability, but one that you were never called upon to meet because it never arose.

Mr. DODGE. I consider that that is a fair way to put it, in the circumstances, the way you have just put it. But I assumed a liability, which I considered the same thing as payment. An obligation to pay is the same thing as payment.

Mr. PECORA. Well, I wish every creditor thought so.

Mr. DODGE. Well, that is the way I have always felt.

Mr. PECORA. Then every debtor would have his debt discharged, merely because the creditor feels that he is under obligation to pay. But the fact of the matter is that you never paid anything for those 8400-odd shares of stock.

Mr. DODGE. The Shermar Corporation carried me for them.

Mr. PECORA. As a matter of fact you never paid anything for those 8400-odd shares of stock, did you?

Mr. DODGE. No; I was never called upon to pay anything.

Mr. PECORA. When those conferences that resulted in the agreement of July 9, 1929, were being held, did Mr. Harley L. Clarke report from time to time on the progress that he had met with or had made in acquiring the assets or stock of the various other companies that were to be acquired in turn by the General Theatres Equipment, Inc.?

Mr. DODGE. If my memory is correct, and I should like to say this subject to checking it, that I think at the time we were having the conferences he already had them in hand. That is, that he either had them under option or had purchased them.

Mr. PECORA. Did he indicate that to you among the others present at the time those conferences commenced?

Mr. DODGE. I would think that he did, otherwise the conferences would not have been of a serious character. He was discussing with bankers about entering into a serious liability, and if he had not been able to deliver it would not have accurred.

Mr. PECORA. Did he report at any of those conferences what consideration he had paid for the acquisition of those assets?

Mr. DODGE. He reported exactly what was in the final contract.

Mr. PECORA. What do you mean by "the final contract"? Which contract are you referring to?

Mr. DODGE. Well, the prices to be paid for the different lamp companies and the half interest in Grandeur, Inc.

Mr. PECORA. Are you referring to the contract of July 9, 1929?

Mr. DODGE. I think I am. [After conferring with an associate.] That is the one, yes. Now, Mr. Pecora, did you mean to ask me if he had told us what he had paid for the property?

Mr. PECORA. Yes.

Mr. DODGE. I always understood that they were going to be turned in at cost to him.

Mr. PECORA. A few moments ago you stated that Mr. Clarke must have acquired or placed under his control for such acquisition, all assets and property interests of the various other corporations that General Theatres Equipment, Inc., in turn was to acquire, didn't you?

Mr. DODGE. Yes, sir.

Mr. PECORA. You also said that Mr. Harley L. Clarke must have so acquired these rights and assets before those conferences——

Mr. DODGE (interposing). Yes, sir.

Mr. PECORA (continuing). Were commenced that led to the making of the agreement of July 9, 1929?

Mr. DODGE. Yes, sir.

Mr. PECORA. Well, if that is so, didn't he report to the sponsors or creators of General Theatres Equipment, Inc., what those assets had cost him?

Mr. DODGE. Unquestionably.

Mr. PECORA. What did he report that they had cost him?

Mr. DODGE. I want to get this right, Mr. Pecora: Are the costs shown in that contract?

Mr. PECORA. I do not think so. [After looking at the contract] No; they are not.

Mr. DODGE. May I take time to check this up?

Mr. PECORA. Surely.

Mr. DODGE. The contract of July 9, 1929, which you are referring to, at page 4, states that it is to cost General Theatres Equipment———

Mr. PECORA (interposing). A little louder, please. I cannot hear you.

Mr. DODGE. I say, the contract of July 9, 1929, at page 4, paragraph 5, states:

to cause said General Theatres Equipment, Inc., to acquire 50 percent of the entire issue of outstanding capital stock of said Grandeur, Inc., at a cost of not to exceed $2,000,000.

Then under paragraph 6 it says:

To cause said General Theatres Equipment to acquire the capital stock of Hall & Connolly, Inc., and the capital stocks of corporations to be organized to acquire the property, business, and assets of The Strong Electric Co., and J. E. McAuley Manufacturing Co., and Ashcraft Automatic Arc Co., as hereinbefore set forth, at a cost of not to exceed $3,000,000.

Mr. PECORA. Well, that merely states what General Theatres Equipment was to pay for those assets.

Mr. DODGE. I understand that that was the cost to him.

Mr. PECORA. Did he tell you that?

Mr. DODGE. Yes.

Mr. PECORA. Did he put that in writing at any time?

Mr. DODGE. I don't think so.

Mr. PECORA. Did you as one of the executive officers of Chase Securities Corporation agree to pay those prices in behalf of General Theatres Equipment without having had before you any proof, other than Clarke's oral statement to you, of the amount he had paid for those assets?

Mr. DODGE. I don't remember that we did.

Mr. PECORA. Would you be likely as a business man to do it in that way?

Mr. DODGE. I absolutely had every confidence in Mr. Clarke.

Mr. PECORA. Do you still have that confidence in him?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, Mr. Clarke testified here that he received in cash $3,100,000 for the stock of Mitchell Camera Co., which he turned over to Grandeur, Inc. You heard that testimony, did you?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was that paid to him out of funds raised by the General Theatres Equipment, Inc., from a sale of its securities?

Mr. DODGE. I understood that Mr. Clarke testified that that was the way he handled the transaction on his own books. The only thing that we were interested in was in the actual payment of the funds according to the schedule, the proceeds of funds from the sale of debentures, and from the sale of the stock, by the bankers. That schedule I had. What Mr. Clarke did with the money, and how he allocated it, I don't know. This is the first time I have seen this statement (holding up a paper). I mean, the other day I saw a copy of it.

Mr. PECORA. Well, apparently, according to the contract of July 9, 1929, all that General Theatres Equipment, Inc., was to pay was 3 million dollars, or a sum not to exceed 3 million dollars, for all the assets of Hall & Connolly, Inc., Strong Electric Co., J. E.

McAuley Manufacturing Co., and Ashcraft Automatic Arc Co.; and a sum not to exceed 2 million dollars for 50 percent of the stock of Grandeur, Incorporated.

Mr. DODGE. Yes, sir.

Mr. PECORA. According to Mr. Clarke's testimony he received in cash $6,100,000 for those combined assets, all told. Now, did he receive more than 5 million dollars, or did the General Theatres Equipment, Inc., pay out more than the 5 million dollars it was obligated to pay under this agreement of July 9, 1929?

Mr. DODGE. Not to my knowledge.

Mr. PECORA. Where did Clarke get this $6,100,000 that he still admits he received?

Mr. DODGE. I don't know. As a banker I was only interested in seeing that the contract was carried through, and that the proper sums of money were paid according to the contract.

Mr. PECORA. Now, under the contracts marked in evidence today as Committee Exhibits 136 and 137, Grandeur, Incorporated, was to receive from the Fox Theatres Corporation, in addition to a sum of $6,000 and $4,000 for the installation of special projector machines, the sum of $175 per month for each projector so acquired from Grandeur, Incorporated, by Fox Theatres.

Mr. DODGE. Yes, sir.

Mr. PECORA. How many Fox theaters did you say there were at that time? I think you said about 500, didn't you?

Mr. DODGE. I think I said there were about 500. That is a generalization, and I don't know.

Mr. PECORA. Assuming that there were 500 Fox theaters at that time, that meant that if every one of those Fox theaters used one each of these special projectors, Grandeur, Inc., would have received by means of these monthly payments of $175 per machine, around $1,050,000 a year for the use of them.

Mr. DODGE. That would be the minimum. Most theaters, as I understand them, have to have at least two machines, and the larger ones have to have three machines.

Mr. PECORA. Well, then, that is limiting the use of those machines only to Fox theaters, and assuming that the number of Fox theaters was 500 at that time.

Mr. DODGE. Yes, sir.

Mr. PECORA. Didn't you consider as one of the sponsors of General Theatres Equipment, Inc., that that was a valuable business for the Equipment Co. to control? I mean the business of leasing these special projector machines that were manufactured by the International Projector Corporation.

Mr. DODGE. Well, as the story was told to me at the time, the profits in the matter of volume of business of International Projector Corporation was in the manufacture of projector machines; that that was the most profitable end of the business.

Mr. PECORA. Which was the most profitable, the return from cost of installation of machines or the rental of $175 per month?

Mr. DODGE. The manufacture of the machines.

Mr. PECORA. Then the rental of $175 per month was a byproduct, or it could be so regarded?

Mr. DODGE. As I explained this morning, Mr. Pecora, Grandeur, Inc., owned the camera which was to take the picture. If they did

not have the camera which would take the picture, then the projecting machine of course could not be sold, and there was competition for the purchase of the Mitchell Camera Co. between William Fox and Mr. Clarke. And the final settlement arrived at, if my memory serves me right, was that the Mitchell Camera Co. would be purchased by Grandeur, Inc., and that General Theatres Equipment would own 50 percent and Mr. Fox would own 50 percent. Now, I also testified this morning that at the time I didn't know it was Mr. Fox personally.

Mr. PECORA. When did you first learn that?

Mr. DODGE. Sometime afterwards.

Mr. PECORA. Well, when?

Mr. DODGE. I would say a month afterwards.

Mr. PECORA. Then you learned of it back in 1929?

Mr. DODGE. In 1929 or 1930.

Mr. PECORA. Did you learn that before all of the financing was done by the Chase National Bank for General Theatres Equipment, I mean before that had been completed?

Mr. DODGE. Do you mean in 1929?

Mr. PECORA. At any time, either in 1929 or in 1930.

Mr. DODGE. Yes, sir.

Mr. PECORA. How many theaters did you think were in existence in July of 1929 that could have used or might have been potential users of this special projecting machine? Didn't you have some information on that subject?

Mr. DODGE. If I have I will have to look it up. I could not answer a question like that from memory. It would only be a generalization. I do not even know how many theaters there were in the country. I do know this, that in the first instance the larger theaters would be the only ones that could afford to pay for it, and then gradually the smaller theaters.

Mr. PECORA (at 2:40 p.m.). Is Mr. Clarke here yet? (A pause, without response.) Where is Mr. Clarke?

Mr. R. L. SMITH, Jr. Mr. Clarke went to his hotel, Mr. Pecora.

Mr. PECORA. But he said he would be about 15 minutes late. Is he here yet?

Mr. SMITH. I have not seen him.

Mr. PECORA. How about the contracts and other documents that, I understood, were available to us?

Mr. SMITH. He had them this morning. I understood that he showed them to Mr. Ross, of your staff, and Mr. Clarke had them.

Mr. PECORA. We have not seen them since recess. Mr. Clarke promised to be back here at a quarter past 2 o'clock and make them available to us. Are they here for that purpose now?

Mr. SMITH. I assume that he has those with him. I will call and make certain when he will be here, if you wish.

Mr. PECORA. Will you be good enough to call over the phone and find out when Mr. Clarke will be here?

Mr. SMITH. Certainly.

Mr. PECORA. Mr. Dodge, do you know whether or not Mr. Fox paid anything for the 50 percent interest that he had in the stock of Grandeur, Inc.?

Mr. DODGE. I don't know.

Mr. PECORA. What was that answer?

Mr. DODGE. I don't know, sir.

Mr. PECORA. We will wait a few minutes to hear from Mr. Clarke.

Mr. SMITH (at 2:50 p.m.). Mr. Clarke has left his hotel, some time ago, and should be here now, Mr. Pecora.

Mr. PECORA. Well, I hope he will be here soon. Now, Mr. Dodge, let us get down to the organization of General Theatres Equipment on July 11, 1929. Were you one of the directors of that company from its very inception?

Mr. DODGE. I don't think I was at the time the actual transaction took place. I was elected later, and what date I don't remember.

Mr. PECORA. Do you recall that there was a board of 11 directors formed for the General Theatres Equipment Corporation?

Mr. DODGE. How was that?

Mr. PECORA. That its board consisted of 11 members.

Mr. DODGE. Ultimately; yes, I think it did.

Mr. PECORA. Weren't all those 11 members persons who were connected as partners or officers in the various members of the banking syndicate that financed General Theatres Equipment, Inc.?

Mr. DODGE. I don't think so. There were the officers of the General Theatres Equipment, Inc., and I don't know just how many banking members there were.

Mr. PECORA. Now, according to my information the president of the corporation at the outset was Harley L. Clarke, and he was also a member of the board.

Mr. DODGE. Yes, sir.

Mr. PECORA. The other members of the board were yourself, Mr. Ingold, Mr. Hammons, Mr. Niver, Mr. Watson, Mr. Michel, Mr. Koegel, Mr. Higley, Mr. Green, and Mr. Burns. Does that accord with your recollection?

Mr. DODGE. I think so.

Mr. PECORA. Now, of those gentlemen, were not Mr. Ingold, Mr. Hammons, Mr. Niver, Mr. Watson, and Mr. Higley, and yourself representatives of members of the banking syndicate?

Mr. DODGE. All but Mr. Higley. As I remember it, there were five banking firms, and each one had a representative on the board.

Mr. PECORA. What was the amount of the capital stock the General Theatres Equipment Corporation was authorized to issue under its charter?

Mr. DODGE. Five million shares.

Mr. PECORA. Did you say five million shares?

Mr. DODGE. Yes, sir.

Mr. PECORA. Of common stock?

Mr. DODGE. Of common stock.

Mr. PECORA. And any preferred stock?

Mr. DODGE. No, sir.

Mr. PECORA. You have heretofore seen this paper which has been marked "Committee Exhibit No. 128", and which I again show you, haven't you, this memorandum dated July 3, 1929, from you and addressed to Mr. Wiggin?

Mr. DODGE. Yes, sir.

Mr. PECORA. Wasn't it proposed originally to have General Theatres Equipment issue 60,000 shares of preferred stock, which was to

have a conversion privilege of three shares of common for one of preferred?

Mr. DODGE. That was Mr. Clarke's suggestion, yes.

Mr. PECORA. And that was the suggestion that you passed on to Mr. Wiggin in this memorandum, committee exhibit no. 128.

Mr. DODGE. Yes, sir.

Mr. PECORA. And that was never carried out, was it?

Mr. DODGE. No, sir.

Mr. PECORA. Why was it abandoned?

Mr. DODGE. I suggested to Mr. Wiggin that that was what Mr. Clarke had proposed, and Mr. Wiggin took it up with the officers of Chase Securities Corporation, and they decided that the preferred stock was something it should not handle. We did not go into many kinds of stock at that time; we handled obligations.

Mr. PECORA. Like bonds and debentures?

Mr. DODGE. Yes; bonds and debentures.

Mr. PECORA. How many of those 5,000,000 shares of common stock that it was authorized to issue were actually issued?

Mr. DODGE. Was that at the beginning?

Mr. PECORA. Yes; at the beginning.

Mr. DODGE. It was 1,644,510 shares.

The CHAIRMAN. And later there were other shares issued?

Mr. DODGE. Yes, sir; other shares were issued later. Also reserved as against conversion of the 6 million dollars of debentures, 180,000 shares; and an additional amount, I think, under the offers made to some of the stockholders of subsidiary companies.

Mr. PECORA. Now, in addition to the issuance of that stock, the company was authorized to issue and sell 6 million dollars par value of 6 percent gold debenture bonds due in 1944, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And were those debentures issued?

Mr. DODGE. Yes, sir.

Mr. PECORA. On what terms?

Mr. DODGE. By the company.

Mr. PECORA. And to whom?

Mr. DODGE. The company received 90.

Mr. PECORA. You say the company received 90?

Mr. DODGE. Yes, sir.

Mr. PECORA. To whom were they issued? To the bankers?

Mr. DODGE. To the bankers.

Mr. PECORA. And the bankers in turn offered them to the public?

Mr. DODGE. Yes, sir.

Mr. PECORA. And distributed them among the public by sale?

Mr. DODGE. Yes, sir.

Mr. PECORA. In connection with such issuance and sale of those debentures by the bankers to the public, do you recognize the document which I now show you to be a true and correct copy of the prospectus that accompanied the offering to the public?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence, and ask that it may be made a part of the hearing.

The CHAIRMAN. Let it be received and the committee reporter will make it a part of the record.

(A photostatic copy of a prospectus of $6,000,000 General Theatres Equipment, Inc., 15-year 6 percent convertible gold debentures, dated July 1, 1929, and to become due July 1, 1944, was marked "Committee Exhibit No. 138, November 17, 1933", and will be found on page 3499.)

The CHAIRMAN. At what price were those debentures sold to the public?

Mr. DODGE. Ninety-nine.

Mr. PECORA. There was a 9-point spread?

Mr. DODGE. Yes, sir.

Mr. PECORA. Did those debentures have any conversion privilege?

Mr. DODGE. Yes, sir; three shares of common stock.

Mr. PECORA. What was that?

Mr. DODGE. Thirty shares of common stock for each $1,000 debenture.

Mr. PECORA. It was 33⅓ shares, wasn't it?

Mr. DODGE. No; 30 shares. That would be 180,000 shares of stock.

Mr. PECORA. Oh, all right. Now, what did you say was the reason why the original proposal to have an issue of preferred stock as well as an issue of common stock, was not carried out?

Mr. DODGE. Mr. Clarke was anxious to have Chase Securities Corporation join in the undertaking, and——

Mr. PECORA (interposing). Yes.

Mr. DODGE (continuing). Personally I was, too, because I thought it was good business for Chase Securities Corporation.

Mr. PECORA. Yes.

Mr. DODGE. And I then suggested to Mr. Wiggin that if Mr. Clarke would issue instead of preferred stock a debenture with a sinking fund and convertible into common shares, that I felt it would be a security that the Chase Securities Corporation could handle.

Mr. PECORA. But you did not think the Chase Securities Corporation could or should handle an issue of common stock?

Mr. DODGE. No; this was preferred stock.

Mr. PECORA. Or of preferred stock?

Mr. DODGE. Of preferred stock. You are now talking about the six million dollars?

Mr. PECORA. I am now talking about the six million dollars of debentures.

Mr. DODGE. Yes, sir.

Mr. PECORA. In Committee Exhibit No. 128, which was offered in evidence last week, and which consists of your memorandum to Mr. Wiggin, under date of July 3, 1929, you say, among other things, as follows:

> As to the preferred stock, Mr. Clarke is very insistent that for the good of the whole business the Chase Securities Corporation join in the purchase and offering of this stock. Having in mind your object ons to appearance, and after consultation with Halstead Freeman, I have suggested that this preferred stock be changed into a convertible debenture; and Ingold of Pynchon & Co. and Clarke had made up their minds to invite Halsey, Stuart into the picture.

What did you have in mind when you said in this memorandum to Mr. Wiggin:

> Having in mind your objections to appearance.

Mr. DODGE. As I testified before, I told Mr. Wiggin that Mr. Clarke's plan involved 60,000 shares of preferred stock, and after consultation we decided that Chase Securities Corporation, because of appearance, would not purchase or, that is, make a public offering of preferred stock.

Mr. PECORA. You thought that for the sake of appearances it would be better if the Chase Securities Corporation were to join in this financing, that instead of preferred stock being issued by GTE it should issue debentures having the privilege of conversion into common stock?

Mr. DODGE. Well, I meant by the word "appearance" there that the debenture or obligation of the company, surrounded by certain provisions which would protect, and which would be redeemable through a sinking fund, would be a better security for the public to buy than a preferred sto k.

Mr. PECORA. Wasn't it really to avoid the appearance of Chase Securities Corporation bringing out and offering to the public an issue of stock that that change was made?

Mr. DODGE. No, sir.

Mr. PECORA. Do you know why Halsey Stuart were invited into the picture?

Mr. DODGE. They were a banking house of national prominence and we thought a wider distribution, a better distribution would be obtained.

Mr. PECORA. Is my recollection correct that Halsey Stuart & Co. are the company for which the "Old Counselor" appeared on the radio every Monday night? That is the same concern, is it not?

Mr. DODGE. Yes.

Mr. PECORA. In this memorandum that you addressed to Mr. Wiggin on July 3, 1929, you wind up with the following statement:

> As between Shermar and Chase Securities Corporation, if the latter take the debentures, it might be fair to give Chase Secu ties Corporation 50 percent of Shermar's participation, without, however, prejudicing Shermar's position in any future financing in the common stock, where no senior financing is involved.

What prompted you to make that suggestion to Mr. Wiggin?

Mr. DODGE. The Chase Securities Corporation had had no interest whatsoever in the subsidiary companies, that is, the International Projector Corporation or the National Theatre Supply. The risk of the business there had been carried by the Shermar Corporation. The Chase Securities Corporation sometimes went into common-stock syndicates.

It did not sell to the public common stocks, but sometimes went into a syndicate; and it seemed to Mr. Freeman and myself, Mr. Freeman being the president of the company, that this was a common stock which had merit and that the Chase Securities Corporation should have a position in it—not a large position in it, but a position in it.

Mr. PECORA. Well, as a matter of fact, during all these conferences which you were having for the weeks preceding the contract of July 9, 1929, you participated in these conferences as vice president of the Chase Securities Corporation, did you not?

Mr. DODGE. Up to the time that the suggestion was made that the Chase Securities Corporation should enter into the business I did not.

Mr. Pecora. Prior to that time were you a participant in those conferences as a representative of the Shermar Corporation or as a representative of the Chase Securities?

Mr. Dodge. As a representative of the Shermar Corporation.

Mr. Pecora. Were you an officer of the Shermar Corporation?

Mr. Dodge. No, sir.

Mr. Pecora. You were an officer of the Chase Securities Corporation?

Mr. Dodge. Yes.

Mr. Pecora. What were you doing in those conferences as a representative of the Shermar Corporation?

Mr. Dodge. Because the Shermar Corporation was initially in 1925 and 1926——

Mr. Pecora. We know about that.

Mr. Dodge. I am explaining it.

Mr. Pecora. Was there any community of interest between the Shermar Corporation and the Chase Securities Corporation?

Mr. Dodge. No.

Mr. Pecora. None whatever, was there?

Mr. Dodge. No, sir.

Mr. Pecora. The Shermar was the personal property of the Wiggins family?

Mr. Dodge. Yes.

Mr. Pecora. And you knew that?

Mr. Dodge. Yes.

Mr. Pecora. The Chase Securities Co. was the property of the stockholders of the Chase National Bank, was it not?

Mr. Dodge. Yes.

Mr. Pecora. Were you devoting any of your time while you were an executive officer of the Chase Securities Corporation and receiving a salary for your time and services from that corporation, to the interests of the Shermar Corporation?

Mr. Dodge. Not much.

Mr. Pecora. Some?

Mr. Dodge. Some; yes. In this particular case; yes. I did devote some time to it, because, as I explained last week, Mr. Pecora, the Shermar Corporation went into this thing partly because and largely because I thought that sometime this company might reach a stage where the financing would be valuable to the Chase Securities Corporation. The Shermar Corporation took an interest in it, and I went on the board of the International Projector Corporation as a director.

Mr. Pecora. Representing the Shermar Corporation's interests?

Mr. Dodge. Representing the Shermar Corporation's interests.

Mr. Pecora. So that for 2 years you served as a director of the International, while you were vice president of the Chase Securities Corporation, for the Shermar Corporation?

Mr. Dodge. I would say so; yes.

Mr. Pecora. When you prepared this memorandum of July 3, 1929, that you addressed to Mr. Wiggin, at what point did you stop looking out for the best interests of the Shermar Corporation and commence looking out for the best interests of the Chase Securities Corporation?

Mr. DODGE. The minute the Chase Securities Corporation became interested in the business.

Mr. PECORA. Who brought the matter to the attention of the Chase Securities Corporation?

Mr. DODGE. I did.

Mr. PECORA. You did?

Mr. DODGE. Yes.

Mr. PECORA. You did so because at one time you reached the stage where you thought the Chase Securities Corporation might profitably participate in this financing?

Mr. DODGE. Profitably; yes.

Mr. PECORA. Why did you not, as the vice president of the Chase Securities Corporation, try to keep intact the interest which was divided between the Chase Securities Corporation and the Shermar?

Mr. DODGE. Didn't want it all.

Mr. PECORA. Who didn't want it all—you?

Mr. DODGE. The Chase Securities Corporation.

Mr. PECORA. Did you propose that they take it over?

Mr. DODGE. Yes.

Mr. PECORA. And the directors turned that down?

Mr. DODGE. No, sir; not the directors—the officers.

Mr. PECORA. Mr. Freeman?

Mr. DODGE. Freeman, myself, and others. There was a 22½ percent interest there, I think it would work out, and all the risk that the Chase Securities Corporation was to take in it was 11¼ percent.

Mr. PECORA. Ultimately, before the General Theatres Equipment went into receivership, can you tell this committee how much money the Chase Bank or any of its security affiliates furnished by way of loans or otherwise to the General Theatres Equipment or to any syndicate trading in its securities, all told?

Mr. DODGE. I was not an officer of the Chase National Bank. If you want me to get that from the Chase National Bank——

Mr. PECORA. Do you know?

Mr. DODGE. I do not know of my own knowledge, but I can get it.

Mr. PECORA. Have you not ever been told?

Mr. DODGE. I have seen memoranda; yes.

Mr. PECORA. According to whatever information you have derived, how much did the Chase Bank or its investment affiliates put into the financing of General Theatres Equipment, all told?

Mr. DODGE. The gross amount or the net?

Mr. PECORA. The gross amount. Give us that first.

Mr. DODGE. I do not think we have it here now. I can get it for you.

Mr. PECORA. Can you not give us an approximation of the gross amount?

Mr. DODGE. No, sir.

Mr. PECORA. How much do you think it was?

Mr. DODGE. I do not think you should ask me to say how much I think it was.

Senator COUZENS. What was on the memoranda you said you saw?

Mr. DODGE. I have seen memoranda. I also read it in newspapers.

Mr. PECORA. What have you seen?

Mr. Dodge. I am not an officer of the Chase National Bank, and I do not wish to give you anything that is not the facts. Should you ask me what I think and should I answer—I want to help you, but I do not think I should give you an answer to that, when I can get the facts.

Mr. Pecora. How long would it take you to get the facts?

Mr. Dodge. I don't know, sir. Mr. Aldrich says I can say we can supply those facts by Tuesday.

Mr. Pecora. In what proportions did the members of this banking syndicate subscribe for these six million par value of debentures?

Mr. Dodge. Chase Securities Corporation, 20 percent; Pynchon & Co., 28 percent; West & Co., 16 percent; W. S. Hammons & Co., 16 percent; Halsey Stuart & Co., 20 percent.

Mr. Pecora. Mr. Dodge, I want to suspend with you now. I see that Mr. Clarke is in the room.

(Witness temporarily excused.)

TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. Pecora. Mr. Clarke, have you now available the documents and records relating to your acquisition of the stock, assets, and property of the four so-called Lamp Companies and the Mitchell Camera Co.?

Mr. Clarke. I have.

Mr. Pecora. Will you produce them?

Mr. Clarke. Yes, sir [handing papers to Mr. Pecora]. I think I have given you one you did not ask for.

Mr. Pecora. Which one is that?

Mr. Clarke. The Mitchell Camera Co.

Mr. Pecora. Yes; I asked for that.

I offer in evidence the five documents produced by the witness. The first one is in the form of a letter addressed to J. E. McAuley, Esq., dated June 30, 1929, signed by H. L. Clarke.

The Chairman. It will be admitted.

(The letter referred to, dated June 30, 1929, addressed to J. E. McAuley, Esq., and signed by H. L. Clarke, was received in evidence, marked "Committee's Exhibit No. 139, Nov. 17, 1933", and will be found on page 3564.)

Mr. Pecora. The second one produced by the witness consists of a duplicate original of an agreement dated April 27, 1929, by and between Clarence S. Ashcraft and Mary C. Ashcraft, his wife, and H. E. Van Dyne.

The Chairman. Let it be admitted.

(The document referred to, being duplicate original of an agreement dated Apr. 27, 1929, between Clarence S. Ashcraft and Mary C. Ashcraft, his wife, and H. E. Van Dyne, was received in evidence, marked "Committee's Exhibit No. 140, Nov. 17, 1933", and will be found on page 3565.)

Mr. Pecora. The third document produced by the witness consists of a duplicate original of a letter addressed to Mr. Harry H. Strong, dated July 14, 1929, signed by H. L. Clarke, accepted by Harry H. Strong.

The CHAIRMAN. Let it be admitted.

(The document referred to, being duplicate original of a letter dated July 14, 1929, from H. L. Clarke to Harry H. Strong, was received in evidence, marked " Committee Exhibit No. 141, Nov. 17, 1933 ", and will be found on page 3566.)

Mr. PECORA. The fourth document produced by the witness consists of an agreement made by and between Theodore Hall and Joseph Connolly, called the sellers, and J. E. McAuley, of Chicago, called the buyer, dated April 12, 1929.

The CHAIRMAN. Let it be admitted.

(The document referred to, being agreement between Theodore Hall and Joseph Connolly, sellers, and J. E. McAuley, buyer, dated Apr. 12, 1929, was received in evidence, marked "Committee's Exhibit No. 142, Nov. 17, 1933 ", and will be found on page 3567.)

Mr. PECORA. The fifth document produced by the witness is what purports to be a copy of an agreement made by and between H. F. Bogart and George A. Mitchell, as sellers, and H. L. Clarke, buyer, dated June 6, 1929.

The CHAIRMAN. Let it be admitted.

(The document referred to, being copy of an agreement between H. F. Bogart and George A. Mitchell as sellers, and H. L. Clarke, buyer, dated June 6, 1929, was received in evidence, marked " Committee's Exhibit No. 143, Nov. 17, 1933 ", and will be found on page 3570.)

Mr. PECORA. These five documents just offered in evidence and marked with exhibit numbers 139, 140, 141, 142, and 143 in evidence, constitute all the documents evidencing the agreements under which you acquired or under which there was acquired for the ultimate use and benefit of the General Theatres Equipment Co., all the various properties and assets referred to?

Mr. CLARKE. Yes, sir. I think one of them is a copy.

Mr. PECORA. Mr. Chairman, these documents have come to me now for the first time, and before proceeding to further examine this witness with respect to them I would like to have an opportunity of familiarizing myself with their contents.

The CHAIRMAN. Very well.

Senator COUZENS. Let me ask the witness a few questions.

How long prior to the conception of the General Equipment, Inc., were those agreements entered into?

Mr. CLARKE. Before the General Theatres was formed?

Senator COUZENS. Yes; or before you conceived idea of forming it?

Mr. CLARKE. I think the idea was conceived for a long time.

Senator COUZENS. It was conceived before these contracts were entered into?

Mr. CLARKE. Yes.

Senator COUZENS. So you had in mind acting as agent for the General Theatres Equipment company when you were making these contracts?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Mr. Chairman, it is about 3:30, and I suggest that we adjourn at this time.

The CHAIRMAN. The subcommittee will now take a recess until 10 o'clock next Tuesday morning.

(Whereupon, at 3:25 p.m., the subcommittee adjourned until Tuesday, Nov. 21, 1933, at 10 a.m.)

COMMITTEE EXHIBIT NO. 136, NOVEMBER 17, 1933

This agreement, made this 24th day of June 1929, by and between Grandeur, Inc., a New York Corporation, first party hereto, hereinafter generally referred to as "Grandeur", and International Projector Corporation, a Delaware corporation, second party hereto, hereinafter generally referred to as "International",

Witnesseth:

Whereas, International has for more than 7 years last past experimented with, and has now developed a special motion-picture projector, without lamp and lamp house, adapted for use in connection with so-called "Grandeur" films (films wider than the regular 35 mm); and

Whereas, Grandeur is desirous of securing the exclusive right of handling and selling all such projectors manufactured by International adapted for use in connection with "Grandeur" films, and International is willing to grant such exclusive right, upon the terms and conditions hereinafter set forth;

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. International agrees that Grandeur shall have the exclusive distribution and sale for all such projectors manufactured by International adapted to the use of "Grandeur" films, and further agrees that during the period of this agreement it will not manufacture for, or sell, lease, license, or otherwise dispose of to any other person, firm, or corporation, nor permit any other person, firm, or corporation, to sell, lease, license, or otherwise dispose of any such projectors or any improvements thereof, or any modifications thereof, or any other projector designed to use films wider than 35 mm prescribed and/or developed either directly or indirectly by or under the supervision of or for the benefit of International Projector Corporation, provided always that Grandeur shall use its best efforts to promote the sale and distribution of such projectors.

2. International agrees to manufacture and sell to Grandeur and Grandeur agrees to purchase from International all such projectors desired by Grandeur during the life of this agreement for sale to Fox Film Corporation, Fox Theatres Corporation and/or their subsidiary or affiliated companies, or others upon the terms and conditions hereinafter set forth.

3. For the first 12 of such projectors Grandeur shall pay International the sum of $6,000 for each of such projectors. For each projector in excess of the said 12 projectors hereinabove mentioned, Grandeur shall pay International $4,000 for each projector.

Deliveries shall commence on or before or as soon after February 1, 1930, as practicable.

4. This agreement shall remain in effect until June 1, 1939.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective proper officers on the day and date first above written.

GRANDEUR, INC.,
By JACK G. LEO,
President.

Attest:
C. S. LEVIN,
Assistant Secretary.

[SEAL]

INTERNATIONAL PROJECTOR CORPORATION,
By W. C. MICHEL, *Vice President.*

Attest:
C. D. HARMSSEN,
Assistant Secretary.

Vice President.

COMMITTEE EXHIBIT NO. 137, NOVEMBER 17, 1933

This agreement, made in triplicate in the City of New York, State of New York, this 24th day of June, 1929, by and between Grandeur, Inc., a New York corporation (hereinafter called "Grandeur"), licensor, and Fox Theatres Corporation, a New York corporation (hereinafter called "Fox"), licensee.

Witnesseth that, for and in consideration of the covenants, stipulations and representations herein set forth, the respective parties hereto agree as follows:

1. (*a*) Grandeur hereby grants to Fox a non-exclusive, non-assignable license to use in the theaters owned, controlled and/or operated by Fox, Fox Film Corporation and their respective subsidiary and/or affiliated companies (subject to all the terms, conditions, limitations and agreements herein contained) special motion picture projectors, without lamp or lamphouse, adapted for use in connection with so-called "Grandeur" films (films wider than the regular 35 m.m. in the quantities and at the times hereafter in this agreement provided and to employ and make use of (to the extent necessarily involved in such use of said projectors) any and all United States patents and applications for United States patents, relating to said projectors or to such use thereof, which are now owned or controlled, or which may during the term of this agreement be owned or controlled by International Projector Corporation, or in respect of which International Projector Corporation has or may hereafter during the term of this agreement have the right to grant such licenses, Grandeur being the licensee of International Projector Corporation, with the right to assign such use of such patents.

(*b*) Grandeur agrees to install in such theaters of Fox, Fox Film Corporation, and/or their subsidiary or affiliated companies that Fox may from time to time designate, 12 such special motion-picture projectors, for which Fox shall pay Grandeur on installation thereof the sum of $6,000.

Grandeur agrees to supply to Fox, and Fox agrees to accept or cause to be accepted from Grandeur under the terms provided in this agreement, during the period commencing approximately February 1, 1930, but in any event as soon as projectors shall be ready for delivery, and ending 10 years thereafter, all motion-picture projectors using films wider than the regular 35 mm that may be required or desired by Fox, Fox Film Corporation, and/or their subsidiary or affiliated companies during such period, it being the agreement of the parties hereto that Fox shall, during such period, use exclusively such projectors as are manufactured by International Projector Corporation. Where hereinafter referred to, Fox shall include not only Fox Theatres but also Fox Film Corporation and/or their subsidiary or affiliated companies.

Grandeur agrees that Fox shall have the first call on any such projectors that Grandeur is able to supply, and Grandeur agrees that so long as any orders for such projectors from Fox are unfilled that no orders for such projectors from others than Fox will be accepted except on the condition that such orders shall be accepted subject to prior deliveries for Fox as herein provided.

2. Fox agrees that it will use and employ the projectors only in theaters owned, controlled, or operated by Fox, and that it will at all times during the period of this license keep and maintain the projectors in good condition.

3. Grandeur agrees to make periodical inspection and minor adjustments in the projectors after they shall have been installed. Grandeur may from time to time install such spare and renewal parts as may, in its opinion, be necessary to the satisfactory operation and maintenance of the projectors.

4. For each such projector in excess of the 12 projectors mentioned in paragraph 1 (*b*) hereof, Fox agrees to pay to Grandeur in New York exchange an installation charge of $4,000 for each such projector, payable upon the shipment of each such projector and the further payments hereinafter provided. In the event that the established installation charge made by Grandeur for such projectors is less than $4,000, at any time during the life of this contract, Fox shall be given the benefit of any such decreased charge from the effective date thereof.

5. In addition to any other payments required to be made by Fox hereunder, Fox agrees to pay to Grandeur throughout the term of the license hereby granted, a monthly payment of $175 in advance. Such payments shall continue for 120 months for each projector. Such monthly payment to be made by Fox to Grandeur, however, shall never be in excess of the amount in effect as the

established monthly payment at the time when such monthly payment is due. The first six machines furnished, however, shall be free from such monthly payment.

6. Fox agrees to pay the cost of transporting the projectors from the place of shipment to the theater and to accept delivery thereof from the common carrier and make payment directly to the common carrier of the charges thereon. Fox will also arrange for any necessary loading, trucking, and unloading to put the projectors down inside the theater, and will directly defray the cost thereof.

7. Fox agrees to comply with all local laws and ordinances relating to the use and operation of the projectors and with any fire insurance underwriter's requirements.

8. Title to and ownership of any and all projectors at any time furnished hereunder shall remain vested in Grandeur.

9. Fox shall bear and discharge promptly any and all personal property taxes which may be charged or levied in connection with the projectors.

10. Fox will permit Grandeur, through its designated agents, engineers, and mechanics, to have access to the theaters of Fox at all reasonable hours for the purpose of installing and from time to time for the purpose of examining, inspecting, and servicing the projectors, and will grant to Grandeur full opportunity to make such adjustments therein and repairs thereto as, in the opinion of Grandeur, are necessary or desirable.

11. This agreement and the license hereby granted and/or to be granted shall, at the option of Grandeur, terminate and come to an end upon the happening of any of the following events, hereby designated to be events of default, to wit:

(*a*) Upon the failure or refusal of Fox for any reason to pay any of the sums herein agreed to be paid by Fox within 30 days after such sum is or may become due.

(*b*) Upon a breach by Fox or any of the covenants herein contained relative to the use or maintenance of the projectors continued for more than 30 days after notice thereof by registered mail from Grandeur.

In the event of a default in any of the provisions of this agreement at any time during the first 2 years of the term of this license, the entire balance of monthly payments for the first 5 years shall be due and payable forthwith at the option of Grandeur and whether or not it terminates this license or removes the projectors as hereinafter provided. The license hereby granted and all obligations imposed upon Grandeur by virtue of this agreement shall be suspended during the continuance of any event of default.

12. Upon termination of or expiration of this license by lapse of time or otherwise, Fox will surrender up and deliver possession of the projectors to Grandeur in good order and condition, reasonable wear and tear and obsolescence due to proper use thereof only excepted, and Grandeur may repossess the projectors and may, for the purpose of reducing the same to possession, enter the theaters of Fox or any other premises where said projectors may be and, without any legal proceedings whatever, possess and remove said projectors, and Fox will cooperate in such removal. If this license shall be terminated by default Grandeur shall thereupon have the right without notice to take immediate possession of said projectors, and for that purpose may pursue the same wherever they may be found and may take and seize the same to its own proper use forever, free from any right of Fox under this agreement. Fox covenants that in any such event no claim will be made for damage on account of removal or otherwise and Fox further agrees that it will hold and save harmless Grandeur from and against any and all claims for damages by any parties whatsoever on account of such removal.

13. In the event of the partial or total destruction of a projector during the term of this license by fire or any other cause, without fault or neglect on the part of Fox, provided Fox shall not be in default under this agreement, and provided Fox shall continue to operate the theater or after any necessary repairs to the theater shall resume its operation, Grandeur will at its own expense repair the projector, or if in the sole judgment of Grandeur such destruction is so extensive as to render the repair impracticable, Grandeur will at its own expense install in the theater a projector as nearly similar as possible to the one destroyed.

14. Grandeur agrees that subject to the provisions hereof it will, at its own expense, defend any and all actions and suits which may during the term

hereof be brought against Fox for infringement of patents by reason of the use by Fox of projectors furnished by Grandeur hereunder, and will pay or satisfy all judgments and decrees for profits, damages and/or costs which may be finally awarded against Fox by a court of last resort in any such action or suit on account of any such infringement provided that Fox shall give Grandeur prompt notice of such action or suit, full information and all reasonable cooperation in connection therewith and full opportunity to defend the same and provided further that this agreement shall not extend to any infringement or claim of infringement arising from the use of any projector in combination with any sound apparatus or in combination with anything not furnished by Grandeur, and that the liability of Grandeur under this agreement shall in no case exceed the total amount paid hereunder by Fox to Grandeur.

15. This agreement shall not be assigned by Fox without the written consent of Grandeur. It shall, however, subject to such restriction upon assignment by Fox, be binding upon the parties and their respective successors, assigns, and legal representatives and shall be interpreted according to the laws of the State of New York.

16. These licenses to be granted hereunder in respect to each projector shall be for a term of 10 years from the day upon which the installation of each respective projector shall have been completed and the projector made available to Fox for use, the last term to expire 5 years from the date of installation in 1939 of the last projector provided for in paragraph 1 of this agreement.

17. The parties hereto expressly stipulate that this agreement as herein set forth contains the entire understanding of the respective parties with reference to the subject matter hereof, and that there is no other understanding, agreement, or representation, expressed or implied, in any way limiting, extending, defining, or otherwise relating to the provisions hereof or any of the matters to which the present agreement relates. No waiver by either party, whether express or implied, of any of the provisions of this agreement shall be construed as constituting a waiver of any other provision or provisions of this agreement or as estopping either party from its right to enforce any provision or all provisions hereof.

In witness whereof, the parties hereto have caused these presents to be executed by their duly authorized officers in their behalf the day and year first above written.

[SEAL]

GRANDEUR, INC.,
By H. L. CLARKE,
President.

Attest: S. R. BURNS,
Secretary.

[SEAL]

FOX THEATRES CORPORATION,
By AARON FOX, *Vice President.*

Attest:
C. S. LEVIN, *Secretary.*

COMMITTEE EXHIBIT NO. 138, NOVEMBER 17, 1933

New issue July 18, 1929

$6,000,000 General Theatres Equipment, Inc., 15-year, 6 percent convertible gold debentures, to be dated July 1, 1929, to be due July 1, 1944

Interest payable semiannually January 1 and July 1, in New York or Chicago without deduction for Federal income tax not exceeding 2 percent. New Hampshire 3 percent tax on interest, Pennsylvania and Connecticut 4 mills taxes, Maryland 4½-mills tax, California and Kentucky 5-mills taxes, Massachusetts 6-percent income tax on interest, and any similar taxes hereafter imposed by Maine not exceeding 5 percent personal property tax or 6 percent income tax, refundable upon proper and timely application. Redeemable on or after July 1, 1930, as a whole at any time or in part on any interest date, on 40-days published notice, at 110 percent of their principal amount and accrued interest. Coupon debentures in interchangeable denominations of $1,000 and $500, registerable as to principal only.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE

Convertibility: These debentures will be convertible at any time after January 1, 1930, at the option of the holders, into the common stock of the company (or, at the option of the company, voting trust certificates therefor) on the basis of 30 shares of such stock as now constituted for each $1,000 principal amount of debentures. In the event of redemption of these debentures prior to maturity, such conversion privilege may be exercised up to and including the tenth day prior to the redemption date.

From his letter Mr. H. L. Clark, president of the General Theatres Equipment, Inc., summarizes as follows:

Organization and business.—General Theaters Equipment, Inc., a Delaware corporation, will own in excess of 60 percent of the outstanding common stocks of International Projector Corporation and National Theater Supply Co., and all of the outstanding common stock of Theatre Equipment Acceptance Corporation. Upon acceptance of the exchange offers now being made, General Theatres Equipment, Inc., will own all of the outstanding common stocks of these companies. The proceeds of present financing will provide funds with which to acquire all of the outstanding funded debt and preferred stocks of these companies. The company will also acquire 50 percent of the outstanding capital stock of Grandeur, Inc., which will acquire through a wholly owned subsidiary, all of the business and assets of Mitchell Camera Co. General Theatres Equipment, Inc., will also acquire all of the capital stock of Hall & Connolly, Inc., and through wholly owned subsidiaries, the properties, businesses, and assets of The Strong Electric Co., J. E. McAuley Manufacturing Co., and Ashcraft Automatic Arc Co.

International Projector Corporation manufactures in excess of 75 percent of the motion-picture projectors used throughout the world, many of its products also being used by churches, schools, and large industrial concerns. The company has adapted its products to the sound picture very successfully and has developed new types of projector machines which are expected to revolutionize the industry.

National Theatre Supply Co. maintains a nation-wide distributing organization which sells all types of equipment used in theatres. It operates 30 stores and warehouses in principal cities of the United States, and has exclusive selling arrangements for products of International Projector Corporation, except those held by Grandeur, Inc.

Grandeur, Inc., was organized to distribute and service the new types of motion-picture projectors which have been developed by International Projector Corporation. It has entered into a contract under which Fox Theatres Corporation, or any affiliated company, agrees to lease from Grandeur, Inc., all projecting equipment of the new type required by it or any subsidiary or affiliated company.

Mitchell Camera Company manufactures professional cameras for both the silent and sound pictures, its products being used by the foremost producers of motion picture films.

Theatre Equipment Acceptance Corporation finances commercial paper taken for theater equipment and secured by contracts of conditional sale, chattel mortgages, etc.

J. E. McAuley Manufacturing Co., Hall & Connolly, Inc., The Strong Electric Co., and Ashcraft Automatic Arc Co. manufacture projection lamps used in theaters. Sound and talking pictures require larger and more powerful light sources resulting in a wide-spread demand for more of the efficient lamps of the types manufactured by these companies.

General Theatres Equipment, Inc., will constitute a complete unit for the manufacture, distribution, installation and servicing of all types of equipment and supplies used in the operation of motion picture and general theaters.

Capitalization.—(Upon completion of the present financing, and upon consummation of the exchanges of securities offered to stockholders.)

	Authorized	Outstanding
Fifteen year 6% convertible gold debentures due 1944 (this issue)	$6,000,000	$6,000,000
Common stock, no par value shares	5,000,000	[1] 2,026,250

[1] Of this total 376,250 shares are reserved for exchange offers to stockholders.

Earnings.—For the twelve months period ended on May 31, 1929, the above mentioned companies and businesses reported a combined net income before Federal income taxes, of $2,283,530. The maximum annual interest requirements on this issue of $6,000,000 15-year 6-percent convertible gold debentures are $360,000.

Sinking fund.—The indenture under which these debentures will be issued will provide for an annual sinking fund of $300,000, beginning July 1, 1933.

Purpose of issue.—The proceeds of this issue of $6,000,000 15-year 6-percent convertible gold debentures will provide funds for the purchase of businesses, properties and/or stocks of Grandeur, Inc., and the projection lamp companies, and for other corporate purposes.

All information given herein is from sources which we regard as reliable; but in no event are the statements herein contained to be regarded as representations of the undersigned.

We offer these debentures, when as and if issued and accepted by us and subject to the approval of our counsel, and to prior sale. Legal details in connection with the issuance of these debentures will be subject to the approval of Messrs. Rushmore, Bisbee & Stern and Messrs. Davisson & Manice, New York City, for the bankers and Messrs. Matthews & Koegel, Chicago, for the company. It is expected that delivery of temporary debentures will be made on or about August 1, 1929.

Price 99 and interest to yield over 6.10 percent.

CHASE SECURITIES CORPORATION.
PYNCHON & CO.
HALSEY, STUART & CO., INCORPORATED.
WEST & CO.
W. S. HAMMONS & CO.

STOCK EXCHANGE PRACTICES

TUESDAY, NOVEMBER 21, 1933

United States Senate,
Subcommittee of the Committee on
Banking and Currency,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment on Friday, November 17, 1933, in the caucus room of the Senate office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Adams (proxy for Costigan), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern; also William Dean Embree, of Milbank, Tweed, Hope & Webb, counsel representing The Chase National Bank and The Chase Corporation.

The Chairman. The subcommittee will come to order. Mr. Dodge, I believe you were on the stand.

TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. Pecora. Mr. Dodge, you have already testified, in substance, to the effect that as vice president of Chase Securities Corporation you attended the various conferences that were held prior to July 9, 1929, among the members of the banking group that sponsored the organization of General Theatres Equipment Corporation?

Mr. Dodge. Yes.

Mr. Pecora. Did you make a study or examination of the assets of the various subsidiary companies whose stock was acquired by General Theatres Equipment Corporation upon its inception?

Mr. Dodge. I know, of course about the National Theatre Supply Co., and also about the International Projector Corporation. As far as a study goes of Grandeur, Inc., and the four lamp companies, I should not want to say that there was a particular study made of those, except that we were assured by the management that they were necessary to the proper working out——

Mr. Pecora (interposing). Will you speak a little louder, please?

Mr. Dodge (continuing). Of the Grandeur, Inc.

Mr. Pecora. Well, now, take for instance the International Projector Corporation, the common stock was taken over by the General Theatres Equipment Corporation at a valuation for the 1,000,000

shares ———— and I am speaking now of the common stock, you will understand—of $28,500,000, which 1,000,000 shares of International Projector Corporation at that time had a book value of two million two hundred forty-five thousand six hundred and odd dollars. Did you approve of that valuation?

Mr. DODGE. Yes, sir.

Mr. PECORA. On what basis?

Mr. DODGE. The International Projector Corporation relied on patents, not on the actual physical assets, and at that time, as has been testified here, the International Projector Corporation had developed this new process of making wide films, and the contract with Grandeur, Inc., was in process of being completed, or had been completed at that time, I forget which; the contract with the Fox Theatres had been made, and, you will understand, those things are not kept secret, the public knew it, and the stock of the International Projector Corporation at that time was selling in the market I think at about $28.50. I think my memorandum to Mr. Wiggin, which is in evidence here, will show that.

Mr. PECORA. Were you familiar with the marketing of that stock?

Mr. DODGE. Do you mean later?

Mr. PECORA. No, at that time. At the time when you say it reached a quotation of $28.50 a share or thereabouts.

Mr. DODGE. I know that the stock had a rapid advance.

Mr. PECORA. On what exchange was it listed at that time?

Mr. DODGE. I think on the curb.

Mr. PECORA. In the unlisted department of securities of the curb exchange?

Mr. DODGE. I don't know.

Mr. PECORA. You knew, didn't you, that the majority of that stock, of all the outstanding common stock of the International Projector Corporation, was owned by a few so-called "insiders", including Mr. Harley L. Clarke?

Mr. DODGE. Yes, sir.

Mr. PECORA. And would you say that under those circumstances the market quotations could be accepted as a safe guide or criterion of actual value?

Mr. DODGE. Not only the market quotations, but also what we considered to be not only the sound value at the time but the prospective value.

Mr. PECORA. How much of this valuation of 28½ million dollars put upon the common stock of the International Projector Corporation by General Theatres Equipment Corporation, represented prospective value, so called?

Mr. DODGE. That would be very difficult to differentiate.

Mr. PECORA. Well, there must have been some line of demarcation, on one side of which were present values, and on the other side of which were prospective values, if prospective values were taken into account for it.

Mr. DODGE. The estimates which were made on the prospective earnings, and the contract which was entered into with the Fox Theatres on the new wide film, varied of course as to the number of projecting machines which would be placed in the theaters, as we discussed the other day. But as I remember it, the minimum amount

that was discussed at that time was between two and three million dollars a year.

Mr. PECORA. Now, the actual earnings that had accrued to the International Projector Corporation during the fiscal year immediately preceding this consolidation of the two companies, were at the rate of 73 cents a share according to testimony heretofore given before this committee.

Mr. DODGE. I heard that testimony. I do know this, that between December and June the earnings of the International Projector Corporation from its old line of business, that is, from the ordinary projector machines and accessories, had almost doubled, and were continuing to do so.

Mr. PECORA. What do you think was a fair ratio between earnings and value?

Mr. DODGE. Then?

Mr. PECORA. Yes.

Mr. DODGE. Well, it was pretty well accepted that based on present as well as future prospects—and that was in 1929; you will remember, that we are speaking now of 1929, which was an entirely different world from the present time—that it ranged anywhere from 20 to 40 times earnings. That is, the public——

Mr. PECORA (interposing). Do you mean that securities were generally sold on that basis of valuation?

Mr. DODGE. No; but the public put that value on it at that time.

Mr. PECORA. You mean that the public paid that much?

Mr. DODGE. I don't know whether you would say that, but the public were buying securities on that basis, yes.

Mr. PECORA. So far as you know, were banks loaning money on such a valuation, computed on that basis, I mean?

Mr. DODGE. On stock exchange securities?

Mr. PECORA. Yes.

Mr. DODGE. So far as I know they probably were. You are referring now to stock exchange day-to-day loans, are you, Mr. Pecora?

Mr. PECORA. Yes.

Mr. DODGE. They probably were.

Mr. PECORA. Now, at the outset of the incorporation of General Theatres Equipment Corporation, it issued 6 million dollars of debentures, did it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And those debentures were acquired by the members of the banking group in certain proportions?

Mr. DODGE. Yes, sir.

Mr. PECORA. I think the testimony heretofore given is to the effect that those bonds were sold to the banking group at 90.

Mr. DODGE. Yes, sir.

Mr. PECORA. And the banking group then passed them on to the public at 99?

Mr. DODGE. Yes, sir.

Mr. PECORA. The Chase Securities Corporation was one of the members of the banking group that took part in that purchase and in that sale to the public?

Mr. DODGE. Yes, sir.

Mr. PECORA. Those debentures were convertible into common stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. On the basis of 30 shares for $1,000 of debentures?

Mr. DODGE. Thirty shares; yes, sir.

Mr. PECORA. You recommended to Mr. Wiggin, in a memorandum that has been introduced in evidence here as "Committee Exhibit No. 128," that in view of Mr. Wiggin's objection to the appearance of Chase Securities Corporation passing out an issue of common stock to the public, that that appearance be avoided by the issuance of those debentures, which carried this conversion privilege, did you not?

Mr. DODGE. Mr. Pecora, it was the suggested issue of preferred stock, not common stock.

Mr. PECORA. Oh, yes; of preferred stock.

Mr. DODGE. Yes, sir. And I think the word "appearance" in common parlance among bankers was to have your name appear on the circular as a recommendation. It did not mean for appearance sake. I just want to differentiate it there.

Mr. PECORA. And I wanted to find out what you meant. In your memorandum, Committee Exhibit No. 128, you said to Mr. Wiggin:

> As to the preferred stock, Mr. Clarke is very insistent that for the good of the whole business the Chase Securities Corporation join in the purchasing and offering of this stock. Having in mind your objections to appearance, and after consultation with Halstead Freeman, I have suggested that this preferred stock be changed into a convertible debenture, and Ingold of Pynchon & Company, and Clark had made up their minds to invite Halsey Stuart into the picture.

Now, as a matter of fact, your suggestion was eventually carried out by the General Theaters Equipment Corporation, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And having in mind the objection which Mr. Wiggin, according to your memorandum, had to the Chase Securities Corporation appearing on an offer to the public of preferred stock, don't you think that you had regard to the form rather than the substance when on your recommendation General Theatres Equipment Corporation put out, in lieu of preferred stock, this issue of debentures with a conversion privilege into the common stock of the company?

Mr. DODGE. Both issues, either the preferred stock or the debentures, were to be convertible. The public at that time was not interested—and that was in 1929 you will understand—did not seem to be interested in straight investment securities. They wanted some speculative feature attached to them, and the conversion in the common stock gave that and made the debentures salable. Now, I testified I think last week that the reason for the Chase Securities Corporation being more willing to appear on an obligation of a company than a preferred stock was that the obligation had a maturity, and if the interest was not paid the security holders could protect themselves. In addition to that there was a sinking fund, which would retire it. As to a preferred stock that would not be true; if the dividends were stopped there was nothing to be done about it.

Mr. PECORA. Now, at the time of the purchase of those debentures had a syndicate account been created or formed which was dealing in the common stock of General Theatres Equipment Corporation?

Mr. DODGE. I testified last week, and I have been reading over my testimony, that at the time of the formation of General Theatres I knew of no trading account. You asked me about a trading account, and——

Mr. PECORA (interposing). Yes, sir.

Mr. DODGE (continuing). In the common stock. I did not know of it of my own knowledge, because I had no interest in it. And Chase Securities Corporation and the Shermar Corporation had no interest in it. I do find, however, upon refreshing my memory, that there was a trading account at that time, which I think Pynchon & Co. were handling.

Mr. PECORA. Who were the participants in that trading account?

Mr. DODGE. The papers which we have would show it was being handled by Pynchon & Co. and Joseph Higgins.

Mr. PECORA. Well, now, wasn't the Shemar Corporation a participant in that account?

Mr. DODGE. No, sir.

Mr. PECORA. What was that answer?

Mr. DODGE. No, sir.

Mr. PECORA. Are you sure of that?

Mr. DODGE. I am quite sure of it. That was in International Projector Corporation and not in General Theatres Equipment Corporation. I thought you were asking me if——

Mr. PECORA (interposing). I am asking about General Theatres Equipment Corporation; yes, sir.

Mr. DODGE. Oh, I am sorry. I thought you referred to the International Projector Corporation.

Mr. PECORA. No; General Theatres Equipment Corporation.

Mr. DODGE. The purchase of the General Theatres Equipment Corporation common stock——

Mr. PECORA (interposing). A block of 300,000 shares.

Mr. DODGE (continuing). And the trading account in connection with that, occurred after the formation of the General Theatres Equipment Corporation.

Mr. PECORA. The formation of the General Theatres Equipment Corporation occurred in July of 1929, didn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. When was this trading account in the common stock of the General Theatres Equipment Corporation formed?

Mr. DODGE. The actual contract, which has been placed in evidence, I believe, was signed on the 9th of July.

Mr. PECORA. On the 9th of July? That was two days before the actual incorporation of General Theatres Equipment Corporation?

Mr. DODGE. I believe so.

Mr. PECORA. So that the agreement under which the trading account was formed was actually entered into 2 days before the legal incorporation of the company in whose common stock the trading account was to deal.

Mr. Dodge. Well, it was a part of the agreement between the bankers to purchase 300,000 shares, or as a matter of fact, 350,000 shares between the bankers.

Mr. Pecora. There were 2 contracts, 1 for the purchase of 300,000 shares in a contract from the General Theatres Equipment Corporation, and then a separate agreement whereby Harley L. Clarke individually sold 50,000 shares?

Mr. Dodge. And gave an option on 200,000 shares.

Mr. Pecora. Yes; and gave an option for 200,000 shares additional, which option was never exercised, was it?

Mr. Dodge. Yes, sir.

Mr. Pecora. What was the purpose of the formation of that trading account under this agreement of July 9, 1929?

Mr. Dodge. It was universally customary at that time that if a group purchased a large block of common stock of a company, that they should have a trading account which would enable them to buy and sell the stock in the market.

Mr. Pecora. Was the stock listed on any exchange?

Mr. Dodge. Not at that time.

Mr. Pecora. It was being dealt in on the over-the-counter market?

Mr. Dodge. At the time when this actual contract was entered into, the company was not formed.

Mr. Pecora. I know that.

Mr. Dodge. Are you referring to a time after the formation of the company?

Mr. Pecora. The contract that was made on July 9, 1929, was made by a syndicate that was composed of Pynchon & Co., who also were managers, West & Co., W. S. Hammons & Co., Halsey, Stuart & Co., and the Shermar Corporation, wasn't it?

Mr. Dodge. Yes, sir.

Mr. Pecora. Now, that contract, which is in evidence here as committee exhibit no. 133, provided for the sale to that syndicate of 300,000 shares of the common stock of the General Theatres Equipment Corporation at $20 a share.

Mr. Dodge. Yes, sir.

Mr. Pecora. Now, in the original agreement the Shermar Corporation was not a party, but the Chase Securities Corporation was a party. Do you recall that?

Mr. Dodge. You must have before you the contract for the purchase of the debentures.

Mr. Pecora. Oh, yes; that refers to the debentures. Where is the stock contract? Let me get that. I show you, Mr. Dodge, a photostatic reproduction of what purports to be a memorandum addressed by you to Mr. Wiggin, under date of July 18, 1929. Will you please look at it and tell me if you recognize it as a true and correct copy of such memorandum?

Mr. Dodge. Yes, sir.

Mr. Pecora. Mr. Chairman, I offer it in evidence, and ask that it may be made a part of the record.

The Chairman. Let it be admitted, and the committee reporter will make it a part of the record.

(A memorandum by Mr. Dodge to Mr. Wiggin, under date of July 18, 1929, was marked "Committee Exhibit No. 144, Nov. 21, 1933", and will be found immediately below where read by Mr. Pecora.)

Mr. PECORA. The memorandum reads as follows:

JULY 18, 1929.

To Mr. WIGGIN. General Theatres Equipment debentures were oversubscribed, and are selling at a premium. The campaign in the stock is going well. Harley Clarke gave us privately information today which makes this very much better even than he thought it before. I believe the distribution is going to be accomplished, and should sell at higher prices.

You will be interested to know that we are entirely out of our commitment on Utilities Power & Light common stock. The stock sold as high as 33 yesterday, and closed around 31½ today.

Ingold is short about 50,000 shares in addition as against our options on 250,000 additional shares at $21.

He has done a splendid piece of work on this. As Jonas has probably reported to you, the Canadian International Papers were practically all sold, which is satisfactory except for the fact that we had to take $2,000,000 of them here, and they will be slow getting out of.

But when we consider the benefits to the company and to the banks, the results seem to be most successful.

Everything else is going along smoothly in matters in which I am particularly interested.

Now, I want to call your attention specifically to the following statement in this memorandum:

The campaign in the stock is going well. Harley Clarke gave us privately information today which makes this very much better even than he thought it before. I believe the distribution is going to be accomplished and should sell at higher prices.

What did you mean by that?

Mr. DODGE. Exactly what it says, Mr. Pecora. Mr. Wiggin was on his vacation. It was a confidential memorandum from me to him, keeping him advised as to how the different securities and operations in which I was interested were going on. As to the reference to the General Theatres debentures, the offering had been made of 6 million dollars of them. They had been oversubscribed by the public, and were selling at that time at a premium. Eventually I think they went as high as 160——

Mr. PECORA (interposing). It went above that, didn't they?

Mr. DODGE. I don't know exactly.

Mr. PECORA. To about 170, didn't they?

Mr. DODGE. Well, above 160, we will say, and the 350,000 shares of common stock which we had subscribed for at that time—well, I am getting a little ahead of my story if you want the full story.

Mr. PECORA. Go ahead.

Mr. DODGE. And they had been turned over to a secondary syndicate, of July 18, which was to offer 500,000 shares, and the stock—well, as to those securities Pynchon & Co. were the syndicate managers. Mr. Ingold was reporting to me from time to time that a country-wide syndicate to join in the offering of the common stock was being successfully accomplished. I believe that the actual offering of the stock was not made to the public until August 1, but as this was a new stock the operations were not on any exchange, but was a distribution through a country-wide offering of bankers and brokers. That was the business of Pynchon & Co. and not of Chase Securities Corporation, as we did not offer the common stock.

Mr. PECORA. Well, now, Pynchon & Co. were handling that business as managers for the syndicate that included Chase Securities Corporation.

Mr. DODGE. Exactly, and they were reporting to us as to whether or not they were successful in forming the group to offer the stock.

Mr. PECORA. Well, now, you said in this memorandum of July 18, 1929, that—

The campaign in the stock is going well.

That referred to the common stock of the General Theatres Equipment Corporation, didn't it?

Mr. DODGE. By "the campaign" I meant getting the group together, getting a country-wide group together to distribute the stock.

Mr. PECORA. Well, now, will you tell this subcommittee how that group was formed, and how the distribution was effected? In other words, tell them about this campaign that on July 18, one week after the incorporation of General Theatres Equipment Corporation agreed to do certain things, and according to your report to Mr. Wiggin, was going well.

Mr. DODGE. Well, as I understand a campaign of that kind. Pynchon & Co., West & Co., W. S. Hammons & Co., and others, whose business it was to distribute the common stock, were communicating with a list of dealers in securities, from one end of the country to the other. I presume they were telling them what the security was, what the prospects were, and were asking them if they would join in the distribution to their customers of those securities.

The CHAIRMAN. Did that include the banks?

Mr. DODGE. No, sir; I would not presume so. A bank might have an investment department, but I do not know who composed this particular list, Senator Fletcher. So I do not know. I have a general idea that it was a pretty large syndicate group.

Mr. PECORA. At what price was this large syndicate group permitted to acquire the stock, or market it?

Mr. DODGE. At $25 a share.

Mr. PECORA. That was the stock that the bankers had just contracted to pay $20 a share for?

Mr. DODGE. Well, the bankers contracted to buy on the 9th, and they took the risk of the business.

Mr. PECORA. I know they took the risk. But we want to see just how they handled that risk. Within a week after they took that risk, or what you call a risk, they organized a campaign throughout the country to distribute the stock, first to the distributing group, to this large group that you refer to, at $25 a share, and then that distributing group was to pass the stock on to the public at what figure?

Mr. DODGE. I think it would be fairer to state that what was formed on the 18th was what we call the purchase group, which was a new group that took the commitment to distribute—and the distributing group was a selling group, and they sold the stock to the public less a commission.

Mr. PECORA. What was the original purchase group? Who composed it?

Mr. DODGE. Pynchon & Co., and they were also syndicate managers, West & Co., W. S. Hammons & Co., Shermar Corporation, and Halsey, Stuart & Co. One half of the interest of the Shermar Corporation, as testified to, I think last week, was taken by the Chase Securities Corporation.

Mr. PECORA. Yes. Now, that purchasing group bought those 350,000 shares at $20 a share?

Mr. DODGE. Yes, sir.

Mr. PECORA. And immediately caused to be organized another group. What do you call that other group?

Mr. DODGE. The purchase group.

Mr. PECORA. You call that the purchase group?

Mr. DODGE. Yes, sir.

Mr. PECORA. But the first group was the original-terms purchase group?

Mr. DODGE. That would be called the original bankers group.

Mr. PECORA. Yes. Now this second group—the purchase group—had the stock allotted to it at $25 a share?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was the entire block of 350,000 shares so allotted?

Mr. DODGE. The group of July 18 was enlarged to a 500,000-share group.

Mr. PECORA. All right. But was this stock allotted to the purchase group, the larger purchase group, at $25 a share completely?

Mr. DODGE. Yes, sir.

Mr. PECORA. By the original-terms group?

Mr. DODGE. Yes, sir.

Mr. PECORA. When did they accomplish that? Within a few days after July 9, wasn't it?

Mr. DODGE. No, sir.

Mr. PECORA. When?

Mr. DODGE. Oh, no, sir. The difference between July 9 and July 18—could I refresh my memory on that?

Mr. PECORA. Certainly. You may refresh your memory at any time you think it is necessary.

Mr. DODGE. It is a little complicated.

Mr. PECORA. All right. Look up any data you wish.

Mr. DODGE (after looking at some papers). It is as I thought. On July 18 Pynchon & Co. as syndicate managers started to form a group.

Mr. PECORA. Yes.

Mr. DODGE. Nine days after the original commitment was made. And that group was actually formed between that date and the public offering of the stock on August 1. Now, at what time it was actually completed, and all this group was signed up, I don't know.

Mr. PECORA. Well, at any rate it was before August 1?

Mr. DODGE. Yes, sir.

Mr. PECORA. We will give you that full latitude of time between July 9 and August 1.

Mr. DODGE. Yes, sir.

Mr. PECORA. During that time the original purchasing group, which contracted to buy the 350,000 shares at $20 a share, allotted all that stock to this larger purchasing group at $25 a share.

Mr. DODGE. Yes, sir.

Mr. PECORA. And then the larger purchasing group passed it on to the public through a distributing group at how much a share?

Mr. DODGE. The public offering price was $32 a share.

Mr. PECORA. And when was that offering made to the public?

Mr. DODGE. On the 1st of August.

Mr. PECORA. So that within 3 weeks' time the original purchasing group composed of this syndicate of five members, which included the bankers that sponsored General Theatres Equipment, took on this risk as you call it of 350,000 shares at $20 a share, and succeeded in passing that risk on to the public at $32 a share by August 1.

The CHAIRMAN. But an enlarged block of shares.

Mr. PECORA. Yes.

Mr. DODGE. And the enlarged block was an offering of 500,000 shares, and the offering to the public was made August 1, but I don't think they were successful in passing it on to the public on that day.

Mr. PECORA. How long did it take them to make that distribution?

Mr. DODGE. I think it took them some time, because the next records we have are of a September 3 syndicate, and at that time all the stock had not been sold.

Mr. PECORA. Now, as early as July 18 this campaign to dispose of those other 350,000 shares, which had been instituted by the original purchase group, was making good headway, or was "going well", according to your report to Mr. Wiggin?

Mr. DODGE. The formation of the purchase group was going well.

Mr. PECORA. When the stock was offered to the public was any circular issued making the offering?

Mr. DODGE. I understand that Pynchon & Co. issued a circular.

Mr. PECORA. Have you a copy of it?

Mr. DODGE. There was a public advertisement on that date I believe. Yes; there was a circular.

Mr. PECORA. Now, I show you what purports to be a printed copy of such a circular. Will you be good enough to look at it and tell us if this is the circular or advertisement that was issued for the offering to the public of the common stock of General Theatres Equipment Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence and ask that it may be made a part of the record.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the record.

(A circular headed "General Theatres Equipment, Inc., Common Stock, Voting Trust Certificates" was marked "Committee Exhibit No. 145, Nov. 21, 1933.")

The CHAIRMAN. What is the price of that stock today?

Mr. DODGE. The company is in the hands of a receiver.

The CHAIRMAN. Has it any market at all?

Mr. DODGE. Practically none.

Mr. PECORA. Do you recall just when it went into receivership?

Mr. DODGE. Sometime the early part of 1932, was it not?

Mr. PECORA. Do you notice that this circular [indicating] is dated July 13, 1929?

Mr. DODGE. July what?

Mr. PECORA. July 13, 1929.

Mr. DODGE. Yes; that is the date.

Mr. PECORA. Can you give this committee any reason why no balance sheet of the company is included in this circular? Do you know any reason why it was not included?

Mr. DODGE. I cannot tell you, except it was a new company, the offer was still open at that time to the security holders of the International Projector. I think that did not expire until August 23. Therefore it was not possible to say exactly what the assets of the company were at that time, although I think it was stated that such an offer was open; but I do not think at that time it was customary for houses such as Pynchon & Co., who were offering common stocks, to have a balance sheet attached to the circulars.

Mr. PECORA. Mr. Dodge, is it not a fact that this company was organized as a holding company, and that at the time of its organization it was designed to take over certain specific securities of operating companies, such as the International Projector, the National Theatre Supply Co., and these four lamp companies which have been alluded to in the record so frequently?

Mr. DODGE. Yes, sir.

Mr. PECORA. And those operating companies had been in business for some time?

Mr. DODGE. Yes, sir.

Mr. PECORA. And consolidated balance sheets were available and could have been included in this prospectus or advertising?

Mr. DODGE. On a pro forma basis?

Mr. PECORA. Yes, sir.

Mr. DODGE. Yes, sir.

Mr. PECORA. The testimony last week that was elicited here from Mr. Clarke was to the effect that at the time of the incorporation of the General Theatres Equipment and the issuance of its securities in exchange for the stock of these subsidiary operating companies there was a mark-up of something like $36,000,000 to $38,000,000 over the asset or book values of those subsidiary companies. Do you recall Mr. Clarke's testimony to that effect?

Mr. DODGE. I recall that there was a good deal of testimony to that effect.

Mr. PECORA. Do you recall that the testimony was, in substance, to the effect that this $36,000,000 to $38,000,000 was watered?

Mr. DODGE. I do not know who said it was water.

Mr. PECORA. I, for one, stated that, and Mr. Clarke finally admitted that it might be so regarded, as I remember his testimony. But the record on that will speak for itself.

Let me ask you: Was it possibly for the reason that a consolidated balance sheet of these companies, if included in the public offering or the advertising circular accompanying the public offering of this stock of General Theatres Equipment might have shown the inclusion of all that water and it might have militated against the public subscribing for the stock if such a consolidated balance sheet was included?

Mr. DODGE. I do not believe that was so.

Mr. PECORA. Did you ever know of an instance where the condition shown by a balance sheet statement would have supported figures and values, it was not given to the public?

Mr. DODGE. Might I have that question again?

(The question referred to was read by the reporter as above recorded.)

Mr. DODGE. I still do not exactly get the question.

Mr. PECORA. If you do not understand that question, I will not press you to answer it.

Mr. DODGE. All right.

Mr. PECORA. When this distributing group was formed just prior to August 1, 1929, by Pynchon & Co. as managers for the original terms purchase group, do you know whether Pynchon & Co. caused to be issued and distributed a letter inviting its dealers throughout the country to join the distributing group?

Mr. DODGE. I should presume they did.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such a letter. Will you please look at it and tell me if you recognize it to be a true and correct copy thereof?

Mr. DODGE. I do not remember having seen it, Mr. Pecora, but I presume it is a correct copy.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered on the record.

(The photostatic copy of letter referred to, dated New York, July 29, 1929, and signed by Pynchon & Co., was received in evidence, marked "Committee Exhibit No. 146, Nov. 21, 1933", and is as follows:)

COMMITTEE EXHIBIT No. 146

Pynchon & Co., 111 Broadway, New York. Distributing Group Managers.

300,000 Shares, General Theatres Equipment, Inc., Voting Trust Certificates for Common Stock (no par value)

Distributing group

NEW YORK, *July 29, 1929.*

DEAR SIRS: We and our associates are forming a Distributing Group, which we are pleased to invite you to join, to offer to the public such portion of 300,000 shares General Theatres Equipment, Inc., Voting Trust Certificates for Common Stock as may not be required in connection with the offers of exchange made by Pynchon & Co., as Syndicate Managers, to the holders of Preferred Stocks of International Projector Corporation and National Theatre Supply Company and holders of 6½% Gold Notes of National Theatre Supply Company. We are enclosing a copy of a circular regarding this issue. Pynchon & Co. are to be Managers of this Group, with full powers.

This stock will be offered for public subscription, subject to allotment, at $32 per share, when, as, and if issued and accepted by us and subject to the approval of our Counsel. Our public advertisements of this issue will appear on Wednesday, July 31, 1929. Following our advertisements, Group Members may advertise at their own expense. A reasonable supply of circulars will be furnished if you will advise Pynchon & Co., 111 Broadway, New York City, of your requirements.

Subscription books will be opened at our office, 111 Broadway, New York City, on Thursday, August 1, 1929, at 10 o'clock A.M. Eastern Daylight Saving Time, and may be closed at any time thereafter in our discretion without notice. We reserve the right to reject any subscriptions in whole or in part, and to allot in our uncontrolled discretion.

From the offering price a net selling commission of $2.00 per share will be allowed on confirmed sales. The selling commission will not be paid with respect to any shares repurchased or contracted for repurchase by the Managers during the life of the Group. As to any confirmed shares which may be repurchased or contracted for repurchase by the Managers at, or below, the offering price during the life of the Group, the Managers reserve the right in lieu of canceling commissions to redeliver to members such shares at their repurchase cost.

Temporary Voting Trust Certificates for Common Stock will be ready for delivery in the first instance on or about August 8, 1929, at the office of Pynchon & Co., 111 Broadway, New York City, against payment in New York funds at $32 per share, the selling commission being payable following the termination of this Group.

The Group will terminate on September 30, 1929, but in the Managers discretion may be extended for an additional period, or periods not exceeding sixty days in the aggregate. The Managers reserve the right to terminate this Group at any time in their sole discretion.

The Managers will cause to be published a State notice respecting this stock in the form required by Article 23-A of the General Business Law of the State of New York.

The Managers shall not be under any liability in respect to the validity or value of the shares or the form or the representations contained in, or the validity of, any letter, circulars, or the voting trust certificates, agreement or other instruments executed by the Company or by others, nor for the delivery of voting trust certificates, nor for the performance by the Company or others of any agreement on its or their part, nor shall they be liable under any of the provisions of this agreement or in or for any matter connected therewith, except want of good faith, and no obligation not expressly assumed by them by this agreement shall be implied therefrom.

If you wish to join this Distributing Group under the terms and conditions of this letter, please complete and sign in the place provided, the form at the foot of the enclosed duplicate, stating the number of shares for which you wish to subscribe, and send such duplicate to Pynchon & Co., Distributing Group Managers, 111 Broadway, New York City, at your earliest convenience. This original letter should be preserved for your records.

Yours very truly,

PYNCHON & CO.,
WEST & CO.,
W. S. HAMMONS & CO.,
BY PYNCHON & CO.
Distributing Group Managers.

JULY —, 1929.

PYNCHON & CO.,
Distributing Group Managers,
111 Broadway, New York, New York.

GENTLEMEN: The undersigned hereby subscribe for ——— shares General Theatres Equipment, Inc., Voting Trust Certificates for Common Stock in the Distributing Group which you are forming as set forth in your foregoing letter to us, dated July 29, 1929, subject to the terms and conditions set forth in your said letter, to which we agree. We agree to accept such lesser amount as you may allot us.

Yours very truly,

Name ——— ———,
Address ——— ———.
(Address to which all notices should be sent.)

Mr. PECORA. Now, the public was never told in any public offering of this stock that the original purchase group had acquired stock at $20 a share by contract with the issuing company, was it?

Mr. DODGE. No, sir.

Mr. PECORA. Nor was the public ever told that the original purchase group had almost immediately caused to be formed a larger purchase group which took over the stock at $25 a share, was it?

Mr. DODGE. I cannot find any record?

Mr. PECORA. You know, as a matter of fact, no such thing was ever done?

Mr. DODGE. No, sir; I do not think it was.

Mr. PECORA. The public was never told, was it, that even the members of this distributing group that was formed under the terms and provisions of this letter of July 29, 1929, were receiving a commission of $2 a share upon any sales they made to the public of these shares at $32 a share?

Mr. DODGE. You mean, in the circular?

Mr. PECORA. In anything.

Mr. DODGE. No, sir.

Mr. PECORA. Do you think, Mr. Dodge, it was fair to the investing public to conceal from it those details?

Mr. DODGE. I did at the time; yes, sir.

Mr. PECORA. Do you still think it was fair, looking at it in retrospect of the past 4 years?

Mr. DODGE. A good deal of water has gone over the dam in the last 4 years, Mr. Pecora. I think that the general feeling at the present time is that more disclosures should be made. I am in hearty accord with that.

Mr. PECORA. The reason I asked you is because of the opposition that has developed in certain quarters in the investment field and among investment bankers' associations to certain provisions of the Securities Act that Congress passed last March at the special session of the Seventy-third Congress.

Mr. DODGE. I do not understand from the talks that I have had with the investment bankers, although I have been away a considerable time, that they have any general objection to the general publicity part of that act. I think that the Investment Bankers Association, as I understand it, and certainly all the investment bankers that I have talked to, are heartily in accord with fuller publicity than was customary 4 or 5 years ago or even 10 or 15 years ago.

Mr. PECORA. In the light of the experience you have had since 1929 you approve thoroughly of the principle of the Securities Act?

Mr. DODGE. As to publicity; yes, sir.

Mr. PECORA. As to publicity and the publicity required by the terms of that act?

Mr. DODGE. Yes, sir.

Mr. PECORA. Is it not a fact, Mr. Dodge, that Pynchon & Co. were made the managers of this selling syndicate because of the experience that that firm had had in handling market campaigns for the securities of other corporations?

Mr. DODGE. Yes, sir.

Mr PECORA. And one of those other corporations was the Utilities Power & Light Co., which was a Harley Clarke company?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Ingold, who was a partner in the firm of Pynchon & Co., was the person who in behalf of that firm as managers of the syndicate particularly handled the market operations in the stock of the General Theatres Equipment Co., was he not?

Mr. DODGE. Yes.

Mr. PECORA. Did not the members of the original purchase group, this banking syndicate, have in mind from the very beginning when they contracted to buy these 350,000 shares of the common stock at $20 a share, marketing that stock through Pynchon & Co. in a fashion that would enable them to dispose of it to the public at a substantial profit and within a short period of time?

Mr. DODGE. Yes, sir.

Mr. PECORA. Did you under date of July 9, 1929, address to Mr. Wiggin a memorandum of which this is a photostatic reproduction, which I now show you?

Mr. DODGE. Is that the one that is already in?

Mr. PECORA. No; that is another one. This is not in evidence yet.

Mr. DODGE. Yes, sir; I did.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted.

(The photostatic copy referred to, addressed to Mr. Wiggin under date of July 9, 1929, by the witness, was received in evidence, marked "Committee Exhibit No. 147, Nov. 21, 1933.")

Mr. PECORA. The memorandum reads as follows [reading]:

MEMORANDUM

July 9, 1929.

To Mr. WIGGIN:

Re General Theatres Equipment, Inc.

Since you left, have pretty well straightened out the terms of this issue to conform to the suggestions you made before leaving. Harley Clarke was pretty stiff on the question of having any sinking fund, but I let him understand that it was a question of our appearing or not. As finally settled, it has been changed from a 20-year to a 15-year debenture with sinking fund, starting after three years, at the rate of $300,000, or 5% per year, retiring 60% at maturity. This seems to be thoroughly satisfactory to Halsey Stuart, who have accepted their participation, as well as a 10% interest in the stock of the syndicate. Chase Securities Corporation have a 20% interest in this business, and will handle the books. Appearance will be as follows:

Top Line: Chase Securities Corporation, Pynchon & Company, & Halsey, Stuart & Company.

2nd Line: West & Company and W. S. Hammons & Company.

As to the stock end of it, the group will purchase 350,000 shares at $20 a share, of which 300,000 is from the company, to be paid for on or before August 23rd, and 50,000 shares is from Harley Clarke, who gave us also an option on 100,000 shares at 20 for 60 days, and 100,000 shares for 90 days. Pynchon & Company will handle this syndicate. If Ingold handles the market on this stock as well as he did on the Utilities Power & Light Common Stock, we would probably not have to take up much stock by August 23rd. However, Harley Clarke needs money the 15th of this month, and may make one of the conditions of his options that we take up 50,000 shares at 20 on the 15th. If so, would like your O.K. on making a syndicate loan for this amount at the Bank. Shermar's percentage of this account is 11¼%, and Chase Securities Corporation's 11¼%, or $111,250 apiece. The rest of the account is—

Pynchon & Company	31½%
Halsey Stuart	10%
West & Co	18%
W. S. Hammons & Co	18%

Contract for stock will be made in the name of The Shermar Corporation, they in turn assigning a half interest to Chase Securities Corporation, in consideration of their taking the major financing.

If legally we find we cannot take up Clarke's stock (the 50,000 shares mentioned above) until we have paid for the debentures, August 1st, probably Clarke will have to have a loan for 15 days, as the proceeds are to make payments due, in order to make the deal possible.

Just talked to Clarke. August 1 is payment date on 50,000 shares, and will not need the money before that. Am hurrying this to get off with other papers.

It is initialed "M.W.D.", and there is an inscription in handwriting at the foot of this typewritten memorandum, reading "O. K.—A.H.W." A.H.W. are the initials of Mr. Wiggin?

Mr. DODGE. Yes.

Mr. PECORA. And M.W.D. are your initials?

Mr. DODGE. Yes, sir.

Mr. PECORA. At the time of the incorporation of General Theatres Equipment it was authorized to issue by its charter 5,000,000 shares of common stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. It actually only issued a little over 2,000,000 shares at the outset; do you remember?

Mr. DODGE. Yes, sir; and I would like at this point to say that in reading over my testimony—you asked me, I think, last Friday, and I think Senator Fletcher asked me, how much was the original amount of stock issued, and I said one million, six hundred thousand, and odd shares of stock. I find it was 1,900,000 shares, because in the memorandum which I used to refresh my memory I did not include the 300,000 shares later sold for cash, or within a few days sold for cash. It was actually a little over 1,900,000.

Mr. PECORA. Of that 1,900,000 shares something over a million shares had been issued to Harley Clarke himself?

Mr. DODGE. Yes; about one million and five, I think.

Mr. PECORA. When this purchasing group was formed under the original terms to purchase not only the 6 million dollars of debentures, but also 300,000 shares of the common stock at $20 a share, which also made $6,000,000, was any arrangement effected with Harley Clarke by this original terms group whereby Clarke agreed not to put any of his common stock on the market until after this syndicate had completed its market operations?

Mr. DODGE. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic copy of a letter signed by Harley L. Clarke, dated July 9, 1929, addressed to Pynchon & Co., the Shermar Corporation, West & Co., W. S. Hammons & Co., and Halsey, Stuart & Co., Inc. Will you please look at it and tell us if it constitutes a true and correct copy of such letter or agreement on the part of Harley Clarke?

Mr. DODGE. I presume that is a true copy.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered on the record.

(The photostatic copy of letter dated July 9, 1929, addressed to Pynchon & Co., and others, and signed by Harley L. Clarke, was received in evidence, marked "Committee Exhibit No. 148, Nov. 21, 1933.")

Mr. PECORA. The exhibit marked "148" in evidence reads as follows [reading]:

COMMITTEE EXHIBIT No. 148

JULY 9, 1929.

PYNCHON & CO.
THE SHERMAR CORPORATION.
WEST & CO.
W. S. HAMMONS & CO.
HALSEY, STUART & CO., INC.

GENTLEMEN: In order to induce you to sign several contracts, dated July 9, 1929, including a contract for the purchase from me of 50,000 shares of the common stock of General Theatres Equipment, Inc., I hereby agree that I will not sell or otherwise dispose of, except to yourselves, any of the common stock of General Theatre Equipment, Inc., which I may receive in exchange for stock owned by me in exchange for stock owned by me in International Projector Corporation and National Theatre Supply Company, or otherwise, in such a manner that it will reach the hands of the public during the life of a

Purchase Group Agreement formed by you in connection with the purchase of 300,000 shares of the said common stock, provided, however, that the life of the said Purchase Group shall in no event extend beyond six months from the date hereof.

If my said Common Stock of General Theatres Equipment, Inc., sold by me to others than yourselves, shall be purchased or repurchased in the market by the Managers of said syndicate during the life of the syndicate, I will repurchase the stock from the said Managers at the net cost to the Managers.

Yours very truly,

(Signed) HARLEY L. CLARKE,
By O. E. KOEGEL,
Atty. in Fact.

Will you tell the committee, please, the reason for obtaining this agreement from Clarke not to put any of his shares on the market while the syndicate of which your company was a member was attempting to dispose of its 350,000 shares which it had bought at $20?

Mr. DODGE. No bankers would sign an agreement to buy $7,000,000 worth of common stock knowing that somebody who owned a million shares of stock could at any time throw their stock on the market.

Mr. PECORA. Why not?

Mr. DODGE. Because it would be impossible to market the stock.

Mr. PECORA. If the stock that the bankers were buying at $20 a share had an intrinsic value of that much, what risk were the bankers taking?

Mr. DODGE. That the owner of the 1,000,000 shares of stock might need the money, change his mind that it was worth to him less than $20 a share, and throw it on the market at $15.

Mr. PECORA. Could you not have satisfied yourselves that Harley Clarke was not in a position at that time that would tempt him to do any such thing and sacrifice any of the stock in the market?

Mr. DODGE. I do not believe he wanted to sell a share of stock; in fact, I felt that he did not want to sell it.

Mr. PECORA. Then why did you obligate him by formal agreement in writing not to put any of his shares on the market during the life of this syndicate that was to be formed by the original terms purchase group?

Mr. DODGE. Business precaution.

Mr. PECORA. A business precaution against what?

Mr. DODGE. Against his selling his stock.

Mr. PECORA. How would the selling of his stock involve any potential loss or risk to this original terms group if they were paying full value of $20 a share for the stock they agreed to buy?

Mr. DODGE. They were not buying the stock for investment for themselves.

Mr. PECORA. They were buying it to pass on to the public at a higher price?

Mr. DODGE. At a profit.

Mr. PECORA. And they were going to pass it on through a stock-selling campaign. Is it not a fact that this purchasing group wanted to control the public market during the time it was making the distribution of these 350,000 shares to the public?

Mr. DODGE. It was not possible to control the public market.

Mr. PECORA. It was possible to the extent that the only shares that would have been on the market would have been the shares,

assuming that Clarke had agreed to keep his shares off the market, that this group agreed to buy at $20 a share?

Mr. DODGE. This was an original issue of stock. It was not going to be offered on the stock exchange or through the stock exchange; it was going to be offered through I don't know how many dealers all over the country.

Mr. PECORA. I know that.

Mr. DODGE. And those dealers and their clients were entitled to protection. In other words, if they offered the stock to their clients at a certain price somebody might have thrown 500,000 or 1,000,000 shares on the market.

Mr. PECORA. Is it not a fact that the reason you wanted Harley Clarke to tie up his stock by this kind of an agreement was to leave the syndicate with a free hand to manipulate the market so that it could dispose of its 350,000 shares at the price they wanted to sell it for, which was ultimately $32 a share, to the public.

Mr. DODGE. I would agree with you in everything but the manipulation, Mr. Pecora.

Mr. PECORA. All right. Well, what word would you care to substitute for "manipulation"? I will let you dictate the terminology.

Mr. DODGE. The stock at this time was selling, I think, at $25 a share; that would be at the equivalent of $25 in the exchange for the old stock, and therefore I think that as conditions were in August 1929, and as a fact as those conditions were in effect it was a big speculative market. The buying demand was greater than the selling demand. Now, if Mr. Clarke would have been free to sell the stock on the market, and he wanted to sell, there would have been more sellers than buyers and the stock would have gone down. We thought that the public at that time was buying a security which had intrinsic merit and that would probably show them a profit. We believed it would.

Mr. PECORA. How much of an intrinsic value did you think the stock had at that time?

Mr. DODGE. At least $32 a share.

Mr. PECORA. At the time the bankers paid $20 a share it was worth intrinsically $30 a share; is that right?

Mr. DODGE. No; that developed afterwards. At the time of July 9 we felt that it was worth at least $20 a share.

Mr. PECORA. And by August 1 you felt it was intrinsically worth at least $32 a share?

Mr. DODGE. Yes.

Mr. PECORA. What had happened between July 9 and August 1 that brought about that very substantial increase in intrinsic value in your opinion?

Mr. DODGE. Well, I do not know as much about selling stocks as I should know. I have had plenty of experience in the last 4 or 5 years. But the idea in 1929, in those times, was that the value of the stock was what the public wanted to pay for them.

Mr. PECORA. Well, was the public given any option as to what it wanted to pay for the stock when it was offered to them at $32 a share on August 1? You are speaking of values as though the public created them in a free and open market, are you not?

Mr. DODGE. I am speaking, I think, Mr. Pecora, of the value that the public set upon a security or a commodity that was placed before

them and saying, "Do you want to buy them at this price?" They did want to buy it at that price.

Mr. PECORA. Now you and I were referring to the intrinsic value of this stock as being $20 a share on July 9.

Mr. DODGE. Yes, sir.

Mr. PECORA. At least. And $32 a share on August 1. Now, what brought about that increase of over 50 percent in the intrinsic value of the stock within a period of about 3 weeks time?

Mr. DODGE. Well, we are talking of a difference of 12 points. On July 9 certainly there would not have been a purchase of $7,000,000 worth of common stock at $20 a share if the purchasers had not felt that the value was higher than $20 a share, because they naturally wanted room for a profit.

Mr. PECORA. Well, that does not yet answer the question of what had occurred between July 9 and August 1, 1929, that caused the intrinsic value of this stock to increase from an intrinsic value of at least $20 a share to one of $32 a share.

Mr. DODGE. A general rise in all the stocks.

Mr. PECORA. Well, now, this stock was not listed at that time, was it?

Mr. DODGE. No. That would not naturally imply that it had to be listed.

Mr. PECORA. Well, you said a general rise in all stocks. You had particular reference to securities that were listed on the public exchanges?

Mr. DODGE. All stocks.

Mr. PECORA. Even the unlisted ones?

Mr. DODGE. The listed and the unlisted ones.

Mr. PECORA. Well, did that affect the intrinsic value?

Mr. DODGE. It affected the value; yes. It affected the value as shown by what the public was willing to pay for stock.

Mr. PECORA. Do you recognize a difference between market value and intrinsic value?

Mr. DODGE. I think that would take a very long argument, Mr. Pecora, because my idea of values——

Mr. PECORA. Well, do you recognize that there is a difference between the so-called "market value" of a security and its so-called "intrinsic" value? In your opinion is there a difference between the two sets of values?

Mr. DODGE. I think the public pretty well settles that for themselves.

Mr. PECORA. Well, I want your individual judgment about that.

Mr. DODGE. That is my judgment. The public pretty well settles that for themselves.

Mr. PECORA. What did the public at that time know about the intrinsic value of this security when it was offered to them at $32? What was it permitted to know about it through the medium of any circular that the public had issued to them, or any advertisement?

Mr. DODGE. This circular, I think, is the only thing that they had at that time.

Mr. PECORA. And does that circular say anything at all about the intrinsic value of the stock? Does it give any balance sheet, for instance. Does it tell what the prospects of the company are? Does it tell what the company has done?

Mr. DODGE. It gives no balance sheet, Mr. Pecora. The stock was offered to the public, Mr. Pecora, as a common stock, and it was offered on an earning basis.

Mr. PECORA. On what?

Mr. DODGE. On an earning basis. I see from this circular that——

Mr. PECORA. That was the earning basis you said justified a value of 20 to 40 times the earnings?

Mr. DODGE. That would seem so.

Mr. PECORA. You do not believe that today, do you?

Mr. DODGE. The public does not believe it.

Mr. PECORA. Well, do you believe it?

Mr. DODGE. I believe a great many securities that I have are worth more than they are selling for—I hope that they are—that I have left. May I suggest—here is a statement of the market as of June 29 on certain selected common stocks. It is very hard to get a comparison, but they do show that on June 29 the market value times the earnings of the companies at that time was all the way from 12 to 45 times. I might read a few of them if it would be of any interest. That is as supporting my statement that at that time the public felt that equities were worth anywhere from 20 to 40 times what they were earning.

Mr. PECORA. Well, now, when the bankers agreed to pay $20 a share for this stock did they feel that the stock was worth from 20 to 40 times its earnings?

Mr. DODGE. We would not have bought it; we would not have taken a risk of buying——

Mr. PECORA. You would not have bought it on any such basis, but you were willing to pass it on to the public on that basis, and you are now attempting to justify that offer to the public on that basis, are you not?

Mr. DODGE. I think I am coupling that with the statement that all stocks on the stock exchange had gone up at that time.

The CHAIRMAN. That is, a spirit of speculation and gambling was rampant all over the country at that time.

Mr. DODGE. Looking back at it now, Senator Fletcher, it seems crazy. The whole country seemed to be speculation mad.

Mr. PECORA. Ingold, one of the partners of Pynchon & Co., was the active market manager for this stock, was he not, in the summer of 1929?

Mr. DODGE. Yes, sir.

Mr. PECORA. Ingold was also one of the three voting trustees for the stock, was he not?

Mr. DODGE. Yes, sir.

Mr. PECORA. Why was this common stock embodied in the form of voting trust certificates?

Mr. DODGE. To preserve the management.

Mr. PECORA. And the management was preserved in the three trustees who were, respectively, Harley Clarke, Mr. Ingold, and Mr. Hammons?

Mr. DODGE. That was the method by which the management was preserved.

Mr. PECORA. Well, they were the three voting trustees?

Mr. DODGE. They were the ones that voted the stock for the management.

Mr. PECORA. Yes. They were the three voting trustees?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, did Pynchon know anything about the moving-picture business?

Mr. DODGE. I do not know.

Mr. PECORA. Did Mr. Hammons, the other banker, know anything about the moving-picture business, so far as you know?

Mr. DODGE. I do not know.

Mr. PECORA. Well, why were two men named as voting trustees if you as one of the sponsors of the company did not know whether or not they were competent to manage a moving-picture corporation?

Mr. DODGE. At that time, Mr. Pecora, I think it is fair to state that this corporation was not a moving-picture company.

Mr. PECORA. Well, it was a holding company.

Mr. DODGE. No; it manufactured machines which were sold to the moving-picture industry.

Mr. PECORA. All right. We will put it that way. Had Mr. Ingold had any experience in business of that kind, to your knowledge?

Mr. DODGE. No, sir.

Mr. PECORA. Had Mr. Hammons?

Mr. DODGE. Not that I know of.

Mr. PECORA. Well, why were 2 of the 3 voting trustees then chosen from men who had no experience in the particular kind of business that this corporation was designed to conduct?

Mr. DODGE. Voting trustees are chosen as men who have judgment of general business affairs and are able to judge as to whether the management is performing well or not performing well. And the stockholders agreed to put into their hands the performance of that judgment.

Mr. PECORA. Did the stockholders ever agree to do that in this case?

Mr. DODGE. Yes, sir; when they bought the securities.

Mr. PECORA. They bought the security that was tied up with such an agreement?

Mr. DODGE. They bought voting trust certificates.

Mr. PECORA. Yes. But there was never any occasion or any instance when the stockholders as stockholders agreed to the creation of a voting trust agreement?

Mr. DODGE. If they did not agree to it, they should not have bought the stock.

Mr. PECORA. I know that.

Mr. DODGE. The minute they bought the stock—the voting trust certificates—they agreed to it. That is what the certificates said.

Mr. PECORA. No; but the agreement creating the voting trust certificates was never made by the stockholders themselves at the outset, was it?

Mr. DODGE. Oh, no, sir.

Mr. PECORA. It was done by the sponsors of the company?

Mr. DODGE. That is right, sir.

Mr. PECORA. And the sponsors of the company selected two or three men as voting trustees to preserve the management of the company, which two men had had no experience, to your knowledge, in

the conduct of the kind of business the General Theatres Equipment was incorporated to conduct? Is that not a plain statement of fact?

Mr. DODGE. I, as a banker, Mr. Pecora, who took an interest for the Chase Securities Corporation in the offering of these securities to the public, and took a responsibility, felt that others who were taking the same responsibility would be better able to protect the investors than some outsider, because they had that responsibility. Now both Mr. Ingold and Mr. Hammons are connected with banking firms who had joined in this offer, and they were more interested in protecting the investors to whom they had sold securities in having good management than an outsider would be. I think that is the real answer to your question.

Mr. PECORA. Well, now, as a matter of fact, was not Ingold chosen because he had proven himself a very successful market operator?

Mr. DODGE. No, sir. That was not the reason he was chosen.

Mr. PECORA. Why was he chosen as a voting trustee?

Mr. DODGE. He was chosen for the reason I say, that a market operator or an investment banker has a responsibility after he has sold the security. And he had more responsibility and more reason to see that the management was a good management than some outsider would have had.

Mr. PECORA. Well, how was he in a position to determine whether a management was efficient or otherwise if he had had no experience in the operation of the kind of business that General Theatres Equipment Co. was organized to conduct?

Mr. DODGE. As much as anybody who has good sound business sense.

The CHAIRMAN. Did these trustees constituting the voting trust receive any compensation as such?

Mr. DODGE. Not that I know of, Senator.

Mr. PECORA. Now Mr. Dodge, do you know how long this trading syndicate continued to operate in the common stock of G. T. E.?

Mr. DODGE. The trading syndicate, I am informed, which was formed in connection with the original group, that is, on July 9, did not perform. It was passed on to the July 18 purchase group.

Mr. PECORA. All right.

Mr. DODGE. And that trading account—I do not know how long it operated or what its operations were. Do you know? [Addressing an associate.] I am informed that it terminated September 3.

Mr. PECORA. September 3. Well, then, when did the second syndicate commence operations?

Mr. DODGE. Which syndicate?

Mr. PECORA. Was there not a second trading syndicate formed?

Mr. DODGE. The July 18 one.

Mr. PECORA. Yes.

Mr. DODGE. That is the one I referred to.

Mr. PECORA. That terminated September 3?

Mr. DODGE. That terminated September 3.

Mr. PECORA. Well, was there not another one formed after that in which Pynchon & Co. were also the managers?

Mr. DODGE. Well, there was a new syndicate formed on September 3.

Mr. PECORA. What is that?

Mr. DODGE. There was a new syndicate formed on September 3.

Mr. PECORA. Who composed that syndicate?

Mr. DODGE. This is information which I have gotten from others, as the Chase Securities Corporation and Shermar Corporation had no interest in the September 3 syndicate. Would you like me to give you the information?

Mr. PECORA. Yes.

Mr. DODGE. W. H. Eshbaugh & Co., 40,000 shares; W. S. Hammons & Co., 10,000 shares; J. E. Higgins, 30,000 shares; Tucker, Hunter Dulin & Co., Inc., 50,000 shares; Pynchon & Co., 50,000 shares; or a total of 180,000 shares of stock.

Mr. PECORA. Is that the group or syndicate that was referred to by you in a memorandum which you addressed to Mr. Wiggin under date of September 19, 1929, what purports to be a photostatic copy of which I now show you [handing same to Mr. Dodge]?

Mr. DODGE (after examining same). That is not the same syndicate.

Mr. PECORA. Do you recall having sent the original of that memorandum to Mr. Wiggin?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer that in evidence and ask to have it spread upon the record.

The CHAIRMAN. It may be received in evidence and placed in the record.

(Memorandum addressed to Mr. Wiggin, dated Sept. 19, 1929, was received in evidence and marked "Committee Exhibit 149 of Nov. 21, 1933.")

Mr. PECORA. The memorandum marked in evidence as "Committee Exhibit No. 149" reads as follows [reading]:

SEPTEMBER 19, 1929.

TO MR. WIGGIN:

Pynchon & Co. are heading a group to buy approximately 215,000 shares General Theaters Equipment stock at $50 a share. In the group with them are Goldman Sachs, Hunter Dulin, Sutro, W. W. Crocker, Higgins, Eschbaugh, and others. They are calling 25 percent margin and they desire a syndicate loan. Total loan on this basis would be $8,000,000, of which they are asking if they can have $5,000,000 from the Chase.

Pynchon are already borrowing $4,000,000 on General Theatre stock for the whole syndicate. Stock is selling today at 65. They want the loan for 90 days or less. This will pay off the $4,000,000 loan.

M. W. D.

In addition at the foot of the memorandum reading as follows:

NOTE.—This was O.K.'d by A. H. W. and the original sent to Mr. Schmidlapp 9/19/29.

Mr. PECORA. Was that loan made to Pynchon & Co. the loan referred to in this memorandum?

Mr. DODGE. I believe it was.

Mr. PECORA. And was that loan based upon a valuation of the stock of $65 a share?

Mr. DODGE. No, sir.

Mr. PECORA. On what basis was the stock?

Mr. DODGE. I understand from that memorandum that the stock was purchased at 50, and they called 25 percent margin; that would be $37.50.

Mr. PECORA. Now, you do know, do you not, that by September 19 this stock was selling in the market at $65?

Mr. DODGE. Yes, sir; from that memorandum.

Mr. PECORA. Do you remember what market that was? Was it New York Curb Exchange?

Mr. DODGE. Curb exchange.

Mr. PECORA. Was it among the unlisted securities traded in on the floor of that exchange at that time?

Mr. DODGE. Mr. Pecora, I do not know that. I will find it out for you. I do not know whether it was listed or unlisted. Do you want me to find that out?

Mr. PECORA. Yes.

Mr. DODGE (after consulting with associates). We do not have it but we will try to obtain it.

Mr. PECORA. All right.

The CHAIRMAN. You say the syndicate bought it at 50?

Mr. DODGE. This particular syndicate bought the stock at 50.

Mr. PECORA. Whom did it buy it from, do you know?

Mr. DODGE. I do not know, sir. I do know that part of it must have been bought from the September 3 syndicate, but that is all hearsay as far as I am concerned. We had no interest in it.

The CHAIRMAN. How long did that loan of $5,000,000 run, do you know?

Mr. DODGE. I do not remember how long it was. It was paid off.

The CHAIRMAN. Was it a short loan—30, 60, 90 days?

Mr. DODGE. It was a demand loan, I think. A demand loan which was paid, I think, within 6 months, or something like that.

Mr. PECORA. I want to refer to committee's exhibit no. 147 in evidence, which is the memorandum addressed by you to Mr. Wiggin under date of July 9, 1929, in which you say in part as follows:

> As to the stock end of it, the group will purchase 350,000 shares at 20 dollars a share, of which 300,000 is from the company, to be paid for on or before August 23, and 50,000 shares is from Mr. Harley Clarke, who gave us also an option on 100,000 shares at 20 for 60 days and 100,000 shares for 90 days.

Now you notice that under this arrangement that was effected by the members of this banking group with General Theaters Equipment Co. at the very outset it was not to pay for any of these 300,000 shares; not obligated to pay for it before August 23, 1929.

Mr. DODGE. Yes.

Mr. PECORA. Under the plan of campaign that had been arranged by the bankers' group to enable them to market those 350,000 shares the group was to dispose of all of those shares at a profit before August 23?

Mr. DODGE. If they could.

Mr. PECORA. If they could. Is that right?

Mr. DODGE. If they could.

Mr. PECORA. And they did?

Mr. DODGE. No, sir.

Mr. PECORA. Did they not pass it on to the second syndicate that was formed on July 18, of which Pynchon & Co. were managers?

Mr. DODGE. Yes, sir.

Mr. PECORA. At a profit of about 1¾ million dollars?

Mr. DODGE. No. Are you talking now about the original group?

Mr. PECORA. I am talking about the original purchase group, yes; composed of five members.

Mr. DODGE. They passed it on to the July 18 syndicate.

Mr. PECORA. They passed it on to the July 18 syndicate group at a profit of $1,750,000?

Mr. DODGE. Five points on 350,000 shares of stock.

Mr. PECORA. Yes. Well, that is $1,750,000.

Mr. DODGE. That would work out mathematically.

Mr. PECORA. Yes. Now, do you know by what process this common stock of General Theatres Equipment reached a selling price in the market by September 18, 1929 of $65 a share? That is exactly 2 months after this second group headed by Pynchon & Co. purchased in the first group the 350,000 shares at 25.

Mr. DODGE. I am trying to get into my mind exactly what you mean by "process." The public at that time between July and September 29, which I think was the high point of that wild-bull market, were buying all stocks to an extent where they went up 50 or 100 percent, some of them.

Mr. PECORA. Now, Mr. Dodge, frankly do you not think that the market operations of this syndicate headed by Pynchon & Co. had some responsibility for putting up the price to that astounding figure? And for the purpose of enabling you to answer that question and giving us your candid opinion on that, Mr. Dodge, let me remind you of the following sequence of events that you have already testified to. General Theatres Co. was not actually legally incorporated until July 11, 1929. Two days before that date its promoter, Harley Clarke, entered into an agreement with the banking syndicate, of which Chase Securities Corporation was one, to sell to the banking syndicate 350,000 of the shares of common stock of G.T.E. for $20 a share, payment not to be made before August 23. On July 18 that banking syndicate passed on that block of stock at $25 a share to a second group of which Pynchon & Co. were the managers. Then Pynchon & Co., through its market operator, Ingold, started the public distribution of the stock, until by September 18, 2 months later, it reached a market quotation of $65 a share. Now what was the process, so far as you can tell this committee, by which that stock reached that high quotation?

Mr. DODGE. Public demand.

Mr. PECORA. Public demand. Between July 18 and September 18 had any information been given to the public by the promoters, organizers, or bankers that informed the public of such a change in the business of the corporation as justified an increase in the value of its stock from $20 a share on July 9 to $65 a share on September 18?

Mr. DODGE. As I remember those times, Mr. Pecora, the public was not interested in information. All they wanted was profits. They were buying stocks.

Mr. PECORA. They were buying stocks without regard to intrinsic value?

Mr. DODGE. Hoping they would go up.

Mr. PECORA. They were buying stocks without regard to intrinsic value?

Mr. DODGE. I do not think they knew.

Mr. PECORA. You do not think they knew anything about them in those hectic days, do you?

Mr. DODGE. I don't think so.

Mr. PECORA. What was this syndicate headed by Pynchon & Co. doing in the market at that time with this stock?

Mr. DODGE. Selling stock, I presume.

Mr. PECORA. They had a pool account, didn't they?

Mr. DODGE. A trading account?

Mr. PECORA. Yes. Well, you call it a trading account; I will call it a pool.

Mr. DODGE. They had a trading account in the September 3 syndicate.

Mr. PECORA. And that syndicate bought and sold at the same time, did it not?

Mr. DODGE. I presume so. I don't know, sir. I had no interest in it.

Mr. PECORA. Weren't you keeping in touch with the situation and with the activities of Pynchon & Co. in the stock of this company?

Mr. DODGE. After September 3?

Mr. PECORA. Yes.

Mr. DODGE. No, sir.

Mr. PECORA. When was application made by General Theatres Equipment to list its shares on the New York Stock Exchange?

Mr. DODGE (after consulting an associate). In January or February of 1930, I am informed.

Mr. PECORA. Had not application been made before then but action thereon delayed by the stock listing committee of the New York Stock Exchange?

Mr. DODGE. There was a preliminary application.

Mr. PECORA. And what happened to that preliminary application?

Mr. DODGE. It was delayed.

Mr. PECORA. For a long time, wasn't it; several months?

Mr. DODGE. For some time.

Mr. PECORA. During the period of that delay did you write a letter to Mr. Harley Clarke, of which the document that I now show you is a photostatic copy?

Mr. DODGE (after examining document). Yes, sir.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(Letter dated Oct. 14, 1929, to Harley L. Clarke from Murray W. Dodge was thereupon designated "Committee Exhibit No. 150, Nov. 21, 1933.")

Mr. DODGE. Mr. Pecora, pardon me; we have no record as to why that was delayed.

Mr. PECORA. The letter just offered in evidence, marked "Committee's Exhibit 150", reads as follows [reading]:

OCTOBER 14, 1929.

Mr. HARLEY L. CLARKE,
President, Utilities Power & Light Corporation,
Chicago, Ill.

DEAR HARLEY: Enclosed is the latest list of members of the stock exchange committee on stock listing. Of course, I could be of assistance to you if Charlie Sargent were here. He is on the board of directors of Chase Securities Corporation, and has been very helpful to us in the past. Unfortunately

however, he is abroad. He sails the end of this week and will not be back until the end of next week. We may be able to do something with Ruxton of Spencer Trask & Co., but I do not like to ask favors of them until we get into a tough position. Frank Altschul of Lazard Freres is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful. Gibson, the chairman, is the most important one, but we do not know him very well. He is a hard nut to crack. I am always fearful in cases like this that we would do more harm than good pressing the matter too hard. I do feel that when the right time comes, whether it is a week from today, or 2 weeks from today, after Charlie Sargent is back, that if you appear before them and I go with you we may be able to push the matter over.

Enclosed find also memorandum given me by Tim Edwards. I think this is the one you are working on. If so, do you want me to call Mahoney off, or can we make use of him in some way? This conversation took place while I was out West.

Sincerely yours,

M. W. D.

Now, Mr. Dodge——

Mr. DODGE (interposing). May I say, Mr. Pecora, to interrupt a minute, the last paragraph has nothing to do with the former.

Mr. PECORA. That is quite apparent. The last paragraph relates to something in no way connected with the first paragraph.

Mr. DODGE. Yes.

Mr. PECORA. Now, Mr. Dodge, apparently from this letter the application which had been made to the New York Stock Exchange for listing stock of the General Theatres Equipment Corporation was having pretty rough sailing at the time; is that correct?

Mr. DODGE. I do not know whether there was any objection to it specifically. I cannot remember that. Everybody was trying to list their stocks on the New York Stock Exchange at that time.

Mr. PECORA. Now, Mr. Dodge, from the reading of your memorandum to Mr. Clarke, is not your recollection refreshed that at that time this application to list the stock was meeting with some opposition at the hands of the listing committee of the New York Stock Exchange?

Mr. DODGE. It certainly was not proceeding rapidly.

Mr. PECORA. And it was not proceeding very smoothly, was it?

Mr. DODGE. Evidently not.

Mr. PECORA. Do you recall what the objections were?

Mr. DODGE. No, sir; I do not.

Mr. PECORA. Haven't you any recollection?

Mr. DODGE. No, sir; I do not. I have been trying to refresh my recollection. I have nothing to show it here at all.

Mr. PECORA. Well, now, let me see if I can refresh your recollection a little bit. We have seen that this stock which was sold to the insiders at $20 a share—and you don't object to that term "insiders", do you, when I refer to the banking group?

Mr. DODGE. I have had some very unfortunate experiences in being an insider. I do not object to it.

Mr. PECORA. You do not object to my using that term in the present instance, do you?

Mr. DODGE. No.

Mr. PECORA. Then this stock which had been sold in July to the insiders at $20 a share and which was being handled in the public market by Pynchon & Co. so that by September 18 it reached a quotation of $65 a share on the New York Curb, had attracted the

attention of the members of the listing committee of the New York Stock Exchange, and because of those sudden rises did not they offer objections to accepting this stock for listing?

Mr. DODGE. I do not know that that is true, any more than it would be of any other stock, Radio Corporation, or any other listed stock which had gone up—General Electric, United States Steel, anything else, any other stocks that had gone up.

Mr. PECORA. Now, let me say, possibly to refresh your memory about that, that officials of the New York Stock Exchange informed us yesterday in substance that the listing committee members had objected because of the disparity of price between the market and the original issuing prices.

Mr. DODGE. Well, if they gave you that information it is undoubtedly true.

Mr. PECORA. Don't you recall it?

Mr. DODGE. No, sir.

Mr. PECORA. As a matter of your own recollection?

Mr. DODGE. No, sir.

Mr. PECORA. What do you recall was the objection that was being met with?

Mr. DODGE. I just cannot recall it. I have been trying to find out for the last week or two.

Mr. PECORA. Who is Charlie Sargent, whom you mentioned in this letter to Mr. Clarke?

Mr. DODGE. Mr. Sargent at that time was a member of the stock exchange.

Mr. PECORA. Was he on the listing committee?

Mr. DODGE. He was on the listing committee; yes, sir. I think he was a member of the firm of Kidder, Peabody & Co.

Mr. PECORA. A personal friend of yours?

Mr. DODGE. Yes, sir.

Mr. PECORA. And you had found his presence on that committee helpful in the past, had you?

Mr. DODGE. Helpful in getting action if there was any delay.

Mr. PECORA. Getting the kind of action you wanted?

Mr. DODGE. Not necessarily. I don't think we had any influence with the members of the listing committee. I never found it was possible to do so.

Senator COUZENS. You must have tried it, then?

Mr. DODGE. Yes, sir. No, we tried to get action. If we asked for application to list and a syndicate was being formed, Senator, to issue a stock and the company wanted to sell it and it was necessary to get it listed within a week or ten days, or something of that kind.

Senator COUZENS. In the course of those efforts, is it possible—I am just asking for information—to change the form of application?

Mr. DODGE. Never, sir.

Senator COUZENS. Never changed after the original filing?

Mr. DODGE. No, sir; not that I know of. The secretary of the committee might have asked for further explanations or further data in connection with it.

Mr. PECORA. Now let's see if I cannot refresh your recollection. You say in this letter to Clarke:

Of course, I could be of assistance to you if Charlie Sargent were here. He is on the board of directors of Chase Securities Corporation and has been very helpful to us in the past.

Now, that meant that he was helpful on similar matters?

Mr. DODGE. I could not influence Mr. Sargent.

Mr. PECORA. How?

Mr. DODGE. I could not influence Mr. Sargent.

Mr. PECORA. Mr. Sargent was one of the board of directors of the Chase Securities Corporation?

Mr. DODGE. I could ask Mr. Sargent in a case like that if he could find out why the application for listing was not being put through and if it could not be expedited. As a friend he probably would take an interest and see that it was expedited if he felt it was proper to do so.

Mr. PECORA. You say "he has been very helpful to us in the past." In what way?

Mr. DODGE. Exactly that way, in helping to expedite it.

Mr. PECORA. Now you said:

We may be able to do something with Ruxton of Spencer, Trask & Co., but I do not like to ask favors of them until we get into a tough position——

Meaning what?

Mr. DODGE. I understand the "tough position" to mean delay.

Mr. PECORA. "Tough position" means delay?

Mr. PECORA (reading):

Mr. DODGE. Yes, sir.

Frank Altschul of Lazard Freres is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful.

Now that is another statement you made in this letter to Clarke. Can you elaborate on that?

Mr. DODGE. The same way; "Altschul will be helpful" meant to expedite.

Mr. PECORA (reading):

Gibson, the chairman, is the most important one, but we do not know him very well. He is a hard nut to crack.

Can you elaborate on that statement in this letter?

Mr. DODGE. No, sir.

Mr. PECORA. How?

Mr. DODGE. No, sir; I could not elaborate on that.

Mr. PECORA. Why did you say that Gibson was a "hard nut to crack" then? Had you found him so in the past?

Mr. DODGE. That is what I understood. I did not know Mr. Gibson. I understood that when Mr. Gibson wanted things to happen in their chronological order it was very difficult to get him to expedite anything at all.

Mr. PECORA. Did you also understand that Mr. Gibson was rather meticulous in acting on listing applications?

Mr. DODGE. All members, I understand, were meticulous.

Mr. PECORA. Including Charlie Sargent?

Mr. DODGE. All of them, always.

Mr. PECORA. Did you think Charlie Sargent was a "hard nut to crack" about those things, as Gibson was?

Mr. DODGE. I do not think he had the same responsibility as Mr. Gibson.

Mr. PECORA. As a member of the committee he had the same responsibility, didn't he?

Mr. DODGE. Yes. The information was passed on to him. I think Mr. Gibson, as I remember it, was one of the ones who collected the data.

Mr. PECORA. Now you make this statement in the letter:

> I do feel that when the right time comes, whether it is a week from today or two weeks from today, after Charlie Sargent is back, that if you appear before them and I go with you we may be able to push the matter over.

Now what did you mean by that?

Mr. DODGE. The matter of listing was entirely between the company and the listing committee. The data was obtained by the listing committee. Mr. Clarke as president of the company was the proper one to appear before the listing committee. Now if I went with him, they would ask me questions as one of the bankers of the company.

Mr. PECORA. Yes.

Mr. DODGE. And if I could be of any assistance to them I would naturally be very glad to do so.

Mr. PECORA. But did you feel you could be of assistance to them? In fact, you felt you would be able to "push the matter over" if Charlie Sargent were present, did you not?

Mr. DODGE. "Pushing the matter over"—I am afraid that memorandum is——

Mr. PECORA (interposing). Is a bit frank? [Laughter.]

Mr. DODGE. Is a bit frank; yes. When you are working to accomplish something "pushing the matter over" means bringing it to a conclusion.

Mr. PECORA. You were writing this memorandum to the man that you knew was one of the promoters of the company of which the Chase Securities Corporation was one of the bankers?

Mr. DODGE. He was the president of the company.

Mr. PECORA. And you felt that you could talk very, very plainly, and in fact confidentially, to him, did you not?

Mr. DODGE. I always did.

Mr. PECORA. And weren't you candidly stating the facts when you wrote this letter to Clarke?

Mr. DODGE. I think it is a very candid letter.

Mr. PECORA. And all of the implications that I have suggested as flowing from it are pretty sound implications, are they not?

Mr. DODGE. Except that if you imply that we could influence the Listing Committee, or I could in any way, that would not be a sound conclusion, because I have never found it possible to do that.

Mr. PECORA. Not even with Charlie Sargent around?

Mr. DODGE. No, sir.

Senator GORE. Mr. Dodge, there is a sentence in this letter about whether the thing should come to a climax a week from now or a month from now would be all right if Sargent was there. That does not seem to relate so much to expedition as it does to the character of the final action taken. Don't you think so? That does not seem to involve expedition. The turning point was whether Sargent was

there or not, whatever the time was, whether it was immediate or remote in the future.

Mr. DODGE. I think I would answer that question as I have before, that if you have people who are friendly to you or——

Senator GORE (interposing). It is better than to have those that are unfriendly; that is obvious.

Mr. DODGE. Sometimes you can do better than if they are unfriendly; yes, sir.

Senator GORE. Yes, sir.

The CHAIRMAN. I think we have spent enough time on that letter. The committee can draw its own conclusions from it, and we have had enough explanations. Let us go on with something else.

Mr. PECORA. Now, Mr. Dodge, it has already been developed in the course of your testimony this morning that the original terms purchase group on the acquisition at $20 a share of its 350,000 shares of the common stock of GTE made a profit of $1,750,000 within 9 days' time?

Mr. DODGE. If they had taken it.

Mr. PECORA. Well, they took it?

Mr. DODGE. No, sir.

Mr. PECORA. Didn't the second syndicate on July 18 take over those 350,000 shares at $25?

Mr. DODGE. Yes, sir; but eventually that profit was taken in stock, not in cash.

Mr. PECORA. But at that time that profit accrued, did it not?

Mr. DODGE. If we demanded it; yes. But we went into the second syndicate, you know, also. We had a liability on that.

Mr. PECORA. I am coming to that second syndicate. What participation did the five original bankers have in the second syndicate?

Mr. DODGE. I can give it to you in shares. We can work it out.

Mr. PECORA. Well, give it to us in shares.

Mr. DODGE. West & Co. had 65,677 shares out of 500,000 shares. That would be 13 percent, would it not?

Mr. PECORA. Well, go ahead.

Mr. DODGE. Pynchon & Co., 132,798 shares out of 500,000 shares.

W. S. Hammons & Co. 63,000 shares.

Halsey, Stuart & Co. 28,548 shares.

The Shermar Corporation 64,233 shares.

Mr. PECORA. That second syndicate was organized to trade in 500,000 shares, wasn't it?

Mr. DODGE. No, sir; to purchase 500,000 shares.

Mr. PECORA. Well, to purchase 500,000 shares. Whom were they to purchase 500,000 shares from?

Mr. DODGE. They purchased 350,000 shares from the July 9 syndicate.

Mr. PECORA. From the original syndicate?

Mr. DODGE. They purchased——[conferring with associate].

The CHAIRMAN. One hundred and fifty thousand from Clarke, was it not?

Mr. DODGE. I beg your pardon, sir?

The CHAIRMAN. One hundred and fifty thousand from Clarke; 100,000 and 50,000 came from Clarke?

Mr. DODGE. No; 50,000 came from Clarke. Three hundred thousand from the company and 50,000 shares from Clarke.

Mr. PECORA. Where were the other 150,000 shares purchased?

Mr. DODGE. J. E. Higgins, 142,906¼ shares.

Senator TOWNSEND. That does not make up the 500,000, quite.

Mr. DODGE. Four hundred and ninety two thousand five hundred and six shares.

Mr. PECORA. The Higgins group was associated with the Pynchon & Co., second syndicate; isn't that right?

Mr. DODGE. No, sir.

Mr. PECORA. Well, which one?

Mr. DODGE. I think that Higgins had been associated with Pynchon in International Projector Corporation stock, which it exchanged for General Theaters stock.

Mr. PECORA. How long did that second purchase syndicate last—I mean its account?

Mr. DODGE. To September 3.

Mr. PECORA. And what was the profit that it made in the course of its operations between July 18 and September 3?

Mr. DODGE. Do you want the aggregate of the syndicate?

Mr. PECORA. Yes; cash and stock both.

Mr. DODGE. Cash, $231,742.53; stock, 55,920 shares.

Mr. PECORA. Which at that time had a market value of how much?

Mr. DODGE. Around $35 a share.

Mr. PECORA. What would that make in dollars and cents in valuation?

Mr. DODGE. You realize, Mr. Pecora, that was not a realized profit.

Mr. PECORA. It was a potential profit at that time, according to market values which you have been attempting to justify throughout your testimony this morning?

Mr. DODGE. Potential profit, but not a realized profit.

Mr. PECORA. Simply because those who received that stock by way of distribution of profits did not sell at that time?

Mr. DODGE. That is correct.

Mr. PECORA. They held it for a further rise, I presume?

Mr. DODGE. No; I think they were in a position where they could not sell that stock. I think they had agreed not to sell.

Mr. PECORA. Oh. Well, what was the market value of the stock at the time it was distributed to them as profits?

Mr. DODGE. I want to answer that question. I will give it to you $35 a share, I think; aproximately $35 a share. [After calculating.] That would be approximately $1,925,000.

Mr. PECORA. Where do you get your $35 market valuation from? Was that the market value at that time? Bear in mind, Mr. Dodge, that according to a memorandum that you sent to Mr. Wiggin around September 18 the stock was then selling at $65 a share.

Mr. DODGE. September what?

Mr. PECORA. Around September 18. That was the date of your memorandum.

Mr. DODGE. The only record I have here, Mr. Pecora, is of September 1, $35.25. I have a record of September 15, 46⅞, and September 23 I believe it sold for 66⅜.

Mr. PECORA. Yes.

Mr. DODGE. But on September 1—now what it was selling at on September 3 I haven't a record of, but I will be glad to try and get it for you.

Senator GORE. What is it worth now?

Mr. PECORA. It is in receivership. It has practically no value. The witness has already testified to that.

Now let me see if this reckoning or calculation that we have made is correct according to your recollection:

The original group received a profit of $5 a share on 350,000 shares on July 18, 1929.

Mr. DODGE. They did not receive it on that date, sir.

Mr. PECORA. Well, from the transaction?

Mr. DODGE. They passed it on.

Mr. PECORA. They passed it on—they passed on the 350,000 shares which they were obligated to buy at $20 a share to the second group—second purchasing group—at $25 a share?

Mr. DODGE. Yes, sir.

Mr. PECORA. Resulting in a profit to them of $1,750,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, the profit did not accrue to them in cash but in the distribution of stock, didn't it?

Mr. DODGE. That is true; yes, sir.

Mr. PECORA. That required a distribution of stock by way of profits to this original group amounting to 58,333 shares?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, didn't the original purchase group also receive 25,000 of the 40,000 shares given by Harley L. Clarke in order for him to be released from his option agreements?

Mr. DODGE. What Mr. Clarke did not want was the option exercised on his 200,000 shares of stock at $20 a share. After negotiation he paid 40,000 shares of stock in order to be released from that option, and——

Mr. PECORA (interposing). He gave that to the syndicate as a consideration for being released from his option agreement?

Mr. DODGE. That is correct.

Mr. PECORA. And 25,000 of those 40,000 shares were distributed to the five members of the original group?

Mr. DODGE. That is right.

Mr. PECORA. Now, that made a total of 83,333 shares which the five members of the original purchasing group received by way of profits?

Mr. DODGE. Right.

Mr. PECORA. Is that right?

Mr. DODGE. Yes, sir; that is right.

Mr. PECORA. Now, giving a valuation of $30 a share to those eighty-three thousand and odd shares, which is what the group did receive from the selling group which was organized to sell to the public at $32 a share and took $2 selling commission to themselves, you will remember—gives a valuation of 2½ million dollars to those eighty-three thousand and odd shares.

Mr. DODGE. We were not giving that valuation.

Mr. PECORA. The syndicate got that?

Mr. DODGE. Yes. But you say giving a valuation. We were not given that valuation, because we held the stock and eventually sold it for very much less.

Mr. PECORA. The distributing group took over the shares at $30 a share to sell to the public at $32 a share, didn't it?

Mr. DODGE. The distributing group?

Mr. PECORA. Yes.

Mr. DODGE. No; they sold at $32 a share less a 2 percent commission.

Senator COUZENS. You did not mean 2 percent but $2 a share commission, didn't you?

Mr. DODGE. Yes.

Mr. PECORA. Well, now, the first group got those eighty-three thousand-odd shares as a profit?

Mr. DODGE. That is right.

Mr. PECORA. Pynchon & Co., as managers of that group by agreement among the members of the group, received 25 percent of the profits for managing the operation?

Mr. DODGE. That is correct.

Mr. PECORA. That made 20,833 shares which went to Pynchon & Co. for their management, commission, and fees?

Mr. DODGE. That is right.

Mr. PECORA. That left to be distributed to all the members of the group 62,500 shares?

Mr. DODGE. That is right.

Mr. PECORA. And those shares were distributed to the members of the original group in the following proportions were they not: Shermar Corporation, 22½ percent or 14,063 shares; Halsey, Stuart & Co., 10 percent or 6,250 shares; West & Co., 18 percent, or 11,250 shares; Hammons & Co., 18 percent, or 11,250 shares; Pynchon & Co., 31½ percent or 19,687 shares.

That is right, isn't it?

Mr. DODGE. I do not have the breakdown, but I presume it is, if those are the figures. I only have the Shermar Corporation, but I think that is correct.

Mr. PECORA. You may if you wish go over these figures and correct them if you see fit, but I think you will find them correct.

Mr. DODGE. If there was a correct accounting made it would be on the percentages that each member of the group had made a commitment.

Mr. PECORA. Yes. This second syndicate was formed July 18, and included in the larger membership the five members of the original purchase group, did it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, do you know the profits that the second syndicate made?

Mr. DODGE. A cash profit of $231,742.53.

Mr. PECORA. And how much of a stock profit?

Mr. DODGE. It was 40,920 shares of unsold stock and 15,000 shares out of the 40,000 shares which Mr. Clarke had paid to be released from his option agreement.

Mr. PECORA. That made a total of 55,920 shares?

Mr. DODGE. That is correct.

Mr. PECORA. And at $30 a share that would represent a profit in addition to the $231,742.53 cash profit of $1,667,600, or a total in cash and stock, valuing the stock at $30 a share, of $1,909,342.53. Have you got that calculation there?

Mr. DODGE. Your mathematics are correct.

Mr. PECORA. And when was that second syndicate terminated, on September 3?

Mr. DODGE. Yes, sir. Well, Mr. Pecora, did you make me say then whether it was terminated at that time or distributed?

Mr. PECORA. Distributed.

Mr. DODGE. No; not distributed on September 3.

Mr. PECORA. When did the distribution take place?

Mr. DODGE. It was terminated, but I think that was later.

Mr. PECORA. Around September 18, wasn't it?

Mr. DODGE. In October, probably.

Mr. PECORA. That makes a total of stock profits, with the stock valued at $30 a share, of $4,409,342, according to my calculation, which went to the members of the original bankers group and the purchase syndicate.

Mr. DODGE. If you put a valuation of $30 a share on it that would be correct. It would work out that way.

Mr. PECORA. Isn't that the valuation that the syndicate itself placed on the stock?

Mr. DODGE. That the syndicate put on it?

Mr. PECORA. Yes.

Mr. DODGE. That was the price at which the 180,000 shares were sold to the new syndicate; yes.

Mr. PECORA. By the syndicate itself?

Mr. DODGE. But the stock which was distributed to the members of the syndicate was profit, and was ultimately realized on at a very much smaller sum. I mean by that if you wish to put a valuation of $30 a share on it, those are the figures. But, as a matter of fact——

Mr. PECORA (interposing). Didn't the syndicate itself put a valuation of $30 a share on that profit stock in order to determine what proportion of the profits were to be paid in cash?

Mr. DODGE. The syndicate managers did; yes.

Mr. PECORA. All right.

Mr. DODGE. But I might add that the Chase Securities Corporation——

The CHAIRMAN (interposing). You say that this stock was subsequently sold at a lower figure. What was that figure, do you know?

Mr. DODGE. I think all this stock was sold eventually by the Chase Securities Corporation based on the present market prices, of something like $40,000, or it was $42,000.

The CHAIRMAN. That was how much per share?

Mr. DODGE. I think that was figured at $4 a share.

Mr. PECORA. Mr. Dodge, I show you now what purports to be a photostatic reproduction of a letter addressed to Mr. Clarke under date of September 10, 1929, signed by the five members of the original purchasing group, namely, the Shermar Corporation, Pynchon & Co., West & Co., Hammons & Co., and Halsey Stuart & Co. Will you please look at it and tell us if you recognize it to be a true and correct copy of such letter?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence and ask that it may be spread on our proceedings.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the record.

(The letter, dated Sept. 10, 1929, from the members of the syndicate to H. L. Clarke was marked "Committee Exhibit No. 151, Nov. 21, 1933", and will be found immediately below where read by Mr. Pecora.)

Mr. PECORA. The letter reads as follows:

SEPTEMBER 10, 1929.

Mr. H. L. CLARKE,
New York City.

DEAR MR. CLARKE: This will confirm the arrangement between you and the undersigned, as follows:

By agreement between you and the undersigned, dated July 9, 1929, there was granted by you to the undersigned options to purchase voting trust certificates representing 200,000 shares of common stock, without par value, of General Theatres Equipment, Inc., at the times and on the conditions therein stated. We hereby relinquish all our right and interest in and to said options in consideration of the delivery by you to us or our nominees of voting trust certificates representing 40,000 shares of common stock of General Theatres Equipment, Inc.

The undersigned now owns or will presently acquire in the aggregate approximately 122,953 shares of said common stock voting trust certificates. The undersigned agree that they shall not sell, or otherwise dispose of, all or any part of said voting trust certificates at any time within 3 months from the date hereof, it being the understanding between us that it is undesirable to place such voting trust certificates on the market during said period. It is further agreed that the undersigned shall not sell, or otherwise dispose of, all or any part of said voting trust certificates within 9 months from the expiration of said 3-month period first hereinabove mentioned, except on the following terms and conditions, viz:

In case any of us shall desire to dispose of all or any part of our respective holdings in said voting trust certificates, notice of such desire shall be given in writing to you, which notice shall state the amount of money, or the value in money, of the consideration for which it is proposed to dispose of same, pursuant to a bona fide offer received by any of us. At any time within 15 days after the receipt of such notice you shall have the right to acquire the holdings of any of us desiring to sell our holdings of said voting trust certificates upon the payment of the amount of money, or the value in money, of the consideration set forth in such notice. If at the expiration of said 15 days you shall not exercise the aforesaid right, we, or any of us, shall be entitled to dispose of our holdings of said voting trust certificates for the amount of money or for the consideration set forth in such notice.

It is further agreed that in the event you shall dispose of your holdings, or any corporation of which you are in control shall dispose of its holdings of said voting trust certificates, you shall make, or cause to be made, provision for the purchase from each of us of our respective holdings of such voting trust certificates, upon the same terms and conditions as you, or any corporation of which you are in control, shall receive, or is entitled to receive, for yourself or itself, for said voting trust certificates, should we, or any of us desire to avail ourselves of such provision.

If the foregoing is acceptable to you, please indicate your acceptance in the space below, which will constitute your acceptance.

Yours very truly,

The Shermar Corporation, by J. F. Wernersbach, treasurer, 21,24[illegible] shares; Pynchon & Co., by W. F. Ingold, a partner, 55,373 shares; West & Co., by W. W. Watson, Jr., a partner, 18,595 shares; W. F. Hammons & Co., by W. F. Hammons, president, 18,29[illegible] shares; Halsey, Stuart & Co., Inc., by E. W. Niver, vice president, 9,143 shares; total, 122,953 shares. Accepted, H. L. Clarke.

Now, Mr. Dodge, what did you mean by the statement in this letter, or what was meant by the statement in this letter, reading as follows:

> The undersigned agree that they shall not sell, or otherwise dispose of, all or any part of said voting trust certificates at any time within 3 months from the date hereof, it being the understanding between us that it is undesirable to place such voting trust certificates on the market during said period?

Mr. DODGE. I can only speak for the interests of the Shermar Corporation and the Chase Securities Corporation, the Chase Securities Corporation having their participation through the Shermar Corporation, that an offer was made on September 3 by Pynchon & Co. to take over from the July 18 syndicate the 180,000 shares of stock. Neither the Chase Securities Corporation nor the Shermar Corporation was a distributor of common shares, and therefore if Pynchon & Co. could get others to take the place of the Shermar Corporation or the Chase Securities Corporation, or both, and close the liability on both the July 9 and the July 18 syndicates, which were formed at that time to purchase from the company certain shares of stock and assist in the organization of the company, it was satisfactory as far as the Chase Securities Corporation was concerned. The stock which they had received represented the profits that——

Mr. PECORA (interposing). That is, the one hundred and twenty-two thousand and odd shares?

Mr. DODGE. Our proportion of the one hundred and twenty-two thousand and odd shares. And it seemed eminently reasonable to us that if any new group was to buy 180,000 shares of stock that they would want to know that this stock, which had been received at a profit in the former syndicates, would not come on the market.

Mr. PECORA. Why?

Mr. DODGE. During their disposition of same.

Mr. PECORA. Why?

Mr. DODGE. Because it would have certainly made it more difficult for the group, to have bought the 180,000 shares, to dispose of their holdings. I understand that they did not buy as an investment but to resell.

Mr. PECORA. To resell at a quick profit?

Mr. DODGE. If possible.

Mr. PECORA. And in order to enable them to do it in the market it was desirable to keep other shares off the market?

Mr. DODGE. This particular block that had been obtained.

Mr. PECORA. Do you think that makes for a free and open market, where the public makes prices on a fair basis or in obedience to the law of supply and demand?

Mr. DODGE. I am very much confused on that subject of supply and demand. I really do not know. I should say that my answer to the thing is the only correct one: that there was a large amount of shares on the market at the time and free to be sold. This particular block of stock was kept off the market because these people were buying 180,000 shares of stock, which made it possible to close those syndicates, and therefore relieve others who did not go along in the next syndicate, from their liability.

Mr. PECORA. You say the people who were buying the 180,000 shares were buying it not for a long-term investment but for the purpose of reselling in the market at a quick profit?

Mr. DODGE. Unquestionably.

Mr. PECORA. In order that their market operations might not be unduly interfered with, it was considered desirable to agree that certain large blocks of that same stock should be kept off the market

during the time that that syndicate was attempting to dispose of its shares at a quick profit.

Mr. DODGE. Not only desirable, but I understood at the time it was one of the conditions.

Mr. PECORA. Does that make for a free and open public market, Mr. Dodge, in your opinion?

Mr. DODGE. If this was all the stock that there was in the market it would not, but there was a large amount of stock that was in the hands of the public.

Mr. PECORA. Doesn't the tying up of any large block of stock interfere with the law of supply and demand in a free and open market?

Mr. DODGE. Well, as to that——

Senator GORE (interposing). What was the total amount outstanding, Mr. Pecora?

Mr. PECORA. About 2,000,000 shares, but over 1,000,000 shares were owned by Harley L. Clarke himself, who was the promoter of this company.

Mr. DODGE. We are getting unduly into the realm of economics there, Mr. Pecora, and I do not know how to answer your question.

Mr. PECORA. Well, many bankers have discussed the law of economics from that witness stand, and they sought to justify stock-market quotations because, as they claimed, they represent the price the public was willing to pay. And you yourself have so recognized market quotations as being the price the public was willing to pay. Now, what I am trying to find out from you is, whether an agreement of that kind, as mentioned in this letter of September 10, 1929, is not of a character which places the public at a decided disadvantage.

Mr. DODGE. You must not forget that the public had purchased a large amount of the shares from the syndicate of July 18, in which the Chase Securities Corporation had an interest. It did no distributing but had a responsibility for those shares. Now, if the public had purchased this stock at $32 a share, and the Chase Securities Corporation had been free to sell their stock on the market, and it had gone down by reason thereof, it would not have been, in my judgment, a sporting proposition; I will put it that way.

Mr. PECORA. Well, that is a concession. Mr. Dodge, I show you what purports to be a photostatic copy of a record furnished to us by the Chase Corporation, and it contains at the end thereof a stamped endorsement or memorandum reading "File M. W. D." Look at it and tell us if you recognize it as a true and correct copy of a memorandum in the files of the Chase Corporation relating to General Theatres Equipment stock.

Mr. DODGE. Yes.

Mr. PECORA. What was that?

Mr. DODGE. It has come from the files of the Chase Corporation?

Mr. PECORA. Yes.

Mr. DODGE. I imagine it is.

Mr. PECORA. Do you recognize it? What does the stamp "File M. W. D." refer to?

Mr. DODGE. This is a quotation of the stock of the General Theatres Equipment Corporation.

Mr. PECORA. The public quotations at various dates as indicated on the statement?

Mr. DODGE. That is right. And it was probably handed to me by somebody and put into my files. It went into the files of the Chase Securities Corporation.

Mr. PECORA. Mr. Chairman, I offer it in evidence and ask that it may be spread on the record of the subcommittee's proceedings.

The CHAIRMAN. Let it be received, and the committee reporter will make it a part of the record.

(A paper headed "General Theatres Equipment" was received in evidence and marked "Committee Exhibit No. 152, Nov. 21, 1933", and will be found on page 3575.)

Mr. PECORA. This is entitled "General Theatres Equipment", and purports to give dates and market quotations on the common stock, as well as of the preferred stock, of that company, with dates beginning July 15, 1929, and terminating on July 9, 1931.

The CHAIRMAN. Does it refer to the debentures?

Mr. PECORA. No, sir; just to the stock. It shows the quotation on July 15, 1929, of 32 for the General Theatres Equipment common stock; of 34 on August 15, of $35\frac{1}{4}$ on September 1, of $46\frac{7}{8}$ on September 15, of 61 on October 1, of $58\frac{3}{4}$ on October 15, and then on November 1 it dropped to $32\frac{7}{8}$. It shows other quotations on other dates as I have indicated, but I wanted merely to call that range of quotations to the subcommittee's attention at this time.

Mr. DODGE. The panic intervened.

Mr. PECORA. Yes; we know that between October 15 and November 1 something happened.

Mr. DODGE. It certainly did.

Mr. PECORA. Now, Mr. Chairman, I think it is about time for the usual recess.

The CHAIRMAN. The subcommittee will now take a recess until 2 o'clock this afternoon.

(Thereupon, at 1 p.m., Tuesday, Nov. 21, 1933, the subcommittee recessed until 2 p.m. the same day at the same place.)

AFTERNOON SESSION

(The subcommittee reconvened at the expiration of the recess at 2 p.m., Tuesday, Nov. 21, 1933.)

The CHAIRMAN. The committee will please come to order. Proceed, Mr. Pecora.

TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. PECORA. Mr. Dodge, I want to eliminate as many unnecessary details as possible in your examination, so instead of going into details I will just refer to certain events and see if they accord with your recollection. The Chase Bank made a loan of $1,250,000 on July 30, 1929, to Pynchon & Co. as managers of the syndicate, did it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And then 2 days later, on August 1, 1929, it made a further loan of $1,250,000 to Pynchon & Co. as syndicate managers.

Mr. DODGE. Yes, sir.

Mr. PECORA. What was the purpose of those two loans?

Mr. DODGE. Pynchon & Co. had taken up the stock, paid the company for the stock. That was on July what, Mr. Pecora?

Mr. PECORA. July 30 and August 1.

Mr. DODGE. Yes.

Senator COUZENS. The agreement read this morning stated that the first payment was August 23.

Mr. PECORA. On or before August 23. These two loans, aggregating 2½ million dollars, were made in order to enable the syndicate to take up some of those 350,000 shares that the banking group, the original group, had contracted to buy at $20 a share.

Mr. DODGE. Certain of the syndicate members——

Mr. PECORA. What is that?

Mr. DODGE. The syndicate manager borrowed money for certain of the syndicate managers. Others had the privilege of taking up and carrying their own proportion.

Mr. PECORA. Then, on August 23, 1929, the Chase Bank made a further loan of $4,000,000 to Pynchon & Co. as syndicate managers. Do you recall that?

Mr. DODGE. That is correct.

Mr. PECORA. What was the purpose of that loan?

Mr. DODGE. The same.

Mr. PECORA. That did not relate to the same syndicate, did it?

Mr. DODGE. Yes, sir. That is the date of the clearance.

Mr. PECORA. The final clearance?

Mr. DODGE. Yes, sir.

Mr. PECORA. That was August 22 and 23?

Mr. DODGE. The 23d was the final date for payment.

Mr. PECORA. So that the members of this purchasing group, the original purchasing group, virtually were able to finance their operations through loans made to the syndicate manager by the Chase.

Mr. DODGE. The total amount of liability was $6,000,000; yes.

Mr. PECORA. And the total amount of loans made between July 30, 1929, and August 23 was $6,500,000?

Mr. DODGE. These loans were made for the account of the July 18 syndicate, I think. That was 500,000 shares at 25. That would be a total of six and a quarter million dollars.

Mr. PECORA. Now, the loan of August 23, 1929, of $4,000,000, was made to Pynchon & Co. as managers of the syndicate that was formed on July 18, or the syndicate that was formed on September 3?

Mr. DODGE. July 18.

Mr. PECORA. And that was the syndicate that took over from the original syndicate or group the shares at 25?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was there a fourth syndicate formed on or about September 20, 1929, with Pynchon & Co. as managers?

Mr. DODGE. There was a syndicate formed then.

Mr. PECORA. What was the object of that syndicate? Was it to purchase 280,000 shares at $50 a share?

Mr. DODGE. I will have to refresh my memory on that a moment. We were not directly interested in that [after conferring with associates]. Yes. That was a syndicate formed, I am informed, to buy 210,000 shares of stock.

Mr. PECORA. Two hundred and ten thousand or two hundred and eighty thousand?

Mr. DODGE. Two hundred and ten thousand.

Mr. PECORA. At $50?

Mr. DODGE. At $50.

Mr. PECORA. Was that a trading syndicate?

Mr. DODGE. Well, it was a syndicate which was formed to buy 210,000 shares. I am sorry not to give you an immediate answer, Mr. Pecora.

Mr. PECORA. That is all right.

Mr. DODGE. I do not know this of my own knowledge. The syndicate on September 20 was formed for 210,000 shares. It had a large number of participants who signed up for 280,000 shares, as you said.

Mr. PECORA. Yes.

Mr. DODGE. I presume that that 210,000-share syndicate must have taken up, or it did take up, an additional 100,000 shares, or it was formed to take up an additional 100,000 shares from the trading account.

Mr. PECORA. Was there a loan made by the Chase Bank to Pynchon & Co. in connection with this last syndicate?

Mr. DODGE. $5,000,000. That was referred to this morning.

Mr. PECORA. That is right.

Mr. DODGE. That paid off the $4,000,000 loan of the other syndicate.

Senator COUZENS. Who were the participants in the last syndicate?

Mr. DODGE. That is, in the 280,000-share syndicate, Senator?

Senator COUZENS. Yes.

Mr. DODGE. There is quite a long list of them here. Would you like to read them, or shall I read them?

Mr. PECORA. There were about 47 firms in it, were there not?

Senator COUZENS. I will just look at the list. [Mr. Dodge hands papers to Senator Couzens.]

Mr. PECORA. In connection with this last syndicate, did you, under date of January 6, 1931, address a memorandum to Mr. Wiggin, a photostatic copy of which I now show you [handing paper to the witness]?

Mr. DODGE. January 6, 1931; yes, sir.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(The document referred to, memorandum, Jan. 6, 1931, Dodge to Wiggin, was received in evidence, marked "Committee's Exhibit No. 153, Nov. 21, 1933, and was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The memorandum marked "Committee's Exhibit 153" in evidence reads as follows [reading]:

COMMITTEE'S EXHIBIT NO. 153

MEMORANDUM, JANUARY 6, 1931

Re: Pynchon & Co. General Theatres Equipment, Inc. Syndicate of September 30, 1929—280,000 shares.

To Mr. WIGGIN:

This syndicate I refused to go into and it was formed largely by Tucker, Hunter Dulin, Goldman Sachs, and Pynchon & Co. The syndicate originally,

at $50 a share, with a cost much higher than present. Of 47 participants, 26 are good.

This is an extremely complicated one owing to the relations of Tucker, Hunter Dulin with the Goldman Sachs Trading Corporation, the American National Corporation and the loan which this group obtained at the American Trust Co., San Francisco, also a subsidiary. Mudge and his partner, Hagen, have given a great deal of time to this, resulting in an offer being made by Goldman Sachs Trading Corporation to clean the whole matter up as far as their interest is concerned. I have followed the matter carefully with Mudge and the plan to clean up this syndicate in the manner suggested. As the matter is very complicated, I would be glad if you will give Mudge and myself a few minutes today to explain the matter and the effect it will have on the bank's loan to Pynchon & Co. and on the whole General Theatres situation. I personally believe this effect will be beneficial. Goldman Sachs are pressing for an answer as we have held the matter over a week until your arrival.

(Signed) M. W. D.

Mr. PECORA. From the statement in this memorandum of yours, stating "this syndicate I refused to go into", it is quite apparent, is it not, that the Chase Securities Corporation was invited to become a participant?

Mr. DODGE. That was written 2 years afterwards.

Mr. PECORA. Yes, but I say it is quite apparent, from the language you used in this memorandum to Mr. Wiggin, that at the time of the formation of that syndicate, in September 1929, the Chase Securities Corporation was invited to become a participant.

Mr. DODGE. Yes, sir. This was my memory of it at the time.

Mr. PECORA. And you refused in behalf of the Chase Securities Corporation to go into it?

Mr. DODGE. Yes.

Mr. PECORA. What was the basis for your refusal?

Mr. DODGE. We had already, as explained this morning, withdrawn from the syndicate—not withdrawn, but our liability had been eliminated through the formation of the September 3 syndicate, which was formed at $30 a share. As I explained this morning, the Chase Securities Corporation could be of no assistance in the distribution of common stock, and for that reason Pynchon & Co. and the other syndicate members were seeking others to go into this syndicate who could assist in the distribution of the common stock, and from that time on—that is, September 3, and this syndicate—we did not go in.

Mr. PECORA. Originally, when the Chase Securities Corporation went into these syndicates, it did so with the view of assisting in the distribution of the common stock that the syndicate purchased, did it not?

Mr. DODGE. The first idea was that we were to go in and purchase the stock from the company, in the formation of the new company and that would be part of the banker's business to do that. As soon as that stock had been distributed, we felt that we had gone as far as we could as bankers.

Mr. PECORA. Did not the Chase Bank, as a matter of fact, make a loan to this syndicate—this syndicate of September 3, 1930?

Mr. DODGE. I understand The Chase National Bank made a certain loan to them.

Mr. PECORA. A loan of $5,000,000, was it not?

Mr. DODGE. Yes.

Mr. PECORA. What security did it get for that loan?

Mr. DODGE. You were talking about the loan made to the syndicate of September 20?

Mr. PECORA. September 20.

Mr. DODGE. That is right: September 20, sir.

Mr. PECORA. In this memorandum which is marked "Exhibit No. 153" you refer to the syndicate as the syndicate of September 30, 1929. That is an error, is it not? It should be September 20?

Mr. DODGE. That is an error. It should be September 20.

Mr. PECORA. In connection with this syndicate of September 20 a loan of $5,000,000 was made by the Chase Bank to Pynchon & Co. as managers of the syndicate?

Mr. DODGE. Yes, sir.

Mr. PECORA. What security did the Chase Bank get for that loan?

Mr. DODGE. A hundred and twenty-five thousand shares of General Theatres voting trust certificates having a market value at the time of seven and a half millions. Collateral was later increased to 227,000 shares. The loan was paid April 15, 1930. Of course the syndicate agreements were also pledged; that is, the liabilities of the syndicate members.

Mr. PECORA. What did you say was the date of the repayment of that loan?

Mr. DODGE. April 15, 1930.

The CHAIRMAN. Was the interest on the loan 6 percent?

Mr. DODGE. Yes, sir; 6 percent; a demand loan.

Mr. PECORA. When this loan was paid on April 15, 1930, was it paid out of the proceeds of another loan made by the Chase Bank?

Mr. DODGE. No, sir.

Mr. PECORA. What was it paid out of? Do you know?

Mr. DODGE. Cash.

Senator COUZENS. Did not Mr. Aldrich testify to the fact that these loans had been charged off or wiped out?

Mr. PECORA. A number of them have been; yes, sir.

Senator COUZENS. I mean, the status of the loans in the Chase National Bank at this time.

Mr. DODGE. I do not know that, Senator.

Mr. PECORA. Now I show you what purports to be a photostatic reproduction of a memorandum addressed by you to Mr. Wiggin under date of April 16, 1930. Will you look at it and tell me if you recognize it to be a true and correct copy of such a memorandum?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered on the record.

(The memorandum referred to, dated Apr. 16, 1930, from Mr. Dodge to Mr. Wiggin, was received in evidence, marked "Committee Exhibit No. 154, Nov. 21, 1933.")

Mr. PECORA. The memorandum marked "Committee Exhibit No. 154" in evidence, dated April 16, 1930, to Mr. Wiggin, reads as follows [reading]:

COMMITTEE EXHIBIT NO. 154

MEMORANDUM, APRIL 16, 1930

To Mr. WIGGIN: No; the General Theaters stock is not free. What happened was this: I was discussing with Bill Ingold the large amount of money that would have to be borrowed in the Fox Film transaction. In view of the fact

that he told me that Pynchon & Co. were in very liquid condition. I suggested to him that it might be a good time to clean up some of the loans secured by slow-selling stuff, which have been running for a long time, and suggesting that it would be good psychology for him to do it, as there might be considerable borrowing to be done in connection with the Fox "A" stock and the new syndicate on General Theatres common. He evidently thought this suggestion was a constructive one, and much to Leon Johnston's surprise and pleasure, cleaned up all his old loans, including the General Theatres. The new syndicate, which we will be in for 350,000 shares of General Theatres stock, will have to operate before our stock is free, especially in view of the fact that the present syndicate is mopping up a considerable amount of stock which is coming out at the present time through conversions of the present debentures. There have been about 40,000 shares of this stock absorbed in the last few weeks.

M. W. D.

What was the situation that existed at that time, Mr. Dodge, with reference to which you prepared and sent this memorandum to Mr. Wiggin?

Mr. DODGE. As you remember, I testified this morning that all of this stock that had been received in the July 9 and July 18 syndicates, under an agreement could not be sold for a period of 6 months; and included in that was some of Mr. Wiggin's stock. He asked me on April 16 if it was free to sell. It was at that time that the Chase Securities Corporation and others were in the middle of the 1930 financing in which the acquisition of the Fox Film Co. took place. I spoke to Mr. Ingold in regard to the fact that probably, as Pynchon & Co. would be syndicate managers of any of the new General Theatres stock which was to be sold in that connection, that as syndicate managers they would probably have to borrow; that this syndicate loan which we referred to here of $5,000,000, or what remained of it—I don't remember what remained of it—and other syndicate loans which he had in the bank, should be paid off so that the bank would not be in a position of loaning to him or his firm as syndicate managers in the new proposition an additional amount of money. He had told me, as I state here, that his firm was in a liquid position and in position to pay it off and, I presumed, to carry the account for the other members. That was the syndicate in which we were not interested. That is what I meant to say, that this loan was paid off in cash on April 15.

Senator COUZENS. Do I understand that the stock that you are talking about being free was collateral to these previous loans that have been referred to?

Mr. DODGE. No, sir; that was the stock which the Chase Corporation and Shermar Corporation had taken down as profit on September 3 and had agreed with Mr. Clarke not to sell for a period of 6 months.

Senator COUZENS. Yes; but as I understood you to say, this is the stock that you had as collateral for this loan and it was not free stock to be sold; is that correct?

Mr. DODGE. No, sir.

Senator COUZENS. I misunderstood, then.

Mr. PECORA. The stock referred to by the witness in this memorandum as not being free stock was stock which the Chase Securities Corporation and the Shermar Corporation had acquired by way of profits out of the July 9 and July 18, 1929, syndicates.

Mr. DODGE. That is right; that is correct, sir.

Mr. PECORA. Why was that stock tied up from July 1929 to April 1930 so that when you referred to it on April 16, 1930, you referred to it as stock which was not free?

Mr. DODGE. There was an agreement entered into with Mr. Clarke that was put in evidence this morning—it was September 10, was it not?—by which 132,000 shares of stock—

Mr. PECORA. 122,000 shares.

Mr. DODGE. Yes. 122,000 shares of stock was not to be put on the market for 6 months.

Mr. PECORA. Why was it not to be put on the market? What was the reason for it?

Mr. DODGE. I think I answered this morning——

Senator COUZENS. Did he not explain that this morning?

Mr. PECORA. I think he explained in regard to another issue.

Mr. DODGE. No; this was the same stock.

Mr. PECORA. The same block?

Mr. DODGE. Part of this issue.

Mr. PECORA. I show you what purports to be a photostatic copy of a memorandum addressed by you to Mr. Wiggin under date of January 7, 1931. Will you look at it and tell me if that is a true and correct copy of such a memorandum?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered on the record.

(The memorandum referred to, dated Jan. 7, 1931, from the witness to Mr. Wiggin, was received in evidence, marked "Committee Exhibit No. 155, Nov. 21, 1933.")

Mr. PECORA. The memorandum marked "Exhibit 155" in evidence is as follows [reading]:

COMMITTEE EXHIBIT No. 155

MEMORANDUM, JANUARY 7, 1931

To Mr. WIGGIN:

Referring further to winding up of General Theatres Equipment Common Stock Syndicate of September 20, 1929, of which Pynchon & Co. are syndicate managers, at a conference today with organization of Pynchon & Co., Leon Johnston, Hagen, and myself, we believe that it works out as follows:

The amount of this syndicate stock now pledged by Pynchon & Co. in Chase Bank loans to Pynchon & Co. of $9,000,000, is 133,263 shares which, figured at present market, $13 a share, is		$1, 732, 419
The syndicate will receive from Goldman Sachs group	$1, 251, 415	
And will receive from sale of default list stock	1, 043, 364	
Total	2, 294, 779	
Out of the money that has been gotten in, there will be paid out to the American Trust Co	1, 023, 000	
Leaving a balance of		1, 271, 779
Which will be paid to the Chase Bank on the Chase Bank loan by Pynchon & Co., leaving a balance of		460, 640
Pynchon & Co. receive from Harley Clarke		200, 000
Balance in loan		260,640
Bank makes another loan to Pynchon & Co. to enable them to purchase 139,743 shares of Old Common Stock from default list and from Goldman Sachs trade at $12 a share		1, 676, 916
Total of loan		1, 937, 556

Or a gross increase over old loan of	$205, 137
Deliveries to Cook and others on "Good" list	151, 000
	54, 137
Collectible from others on "Good" list for share of losses	312, 000
net decrease in loan	257, 863

If neither of the above two items are immediately collectible, although counsel believes they are valid claims, and figuring the old common stock at $13 collateral value, the collateral will be increased from 133,263 shares to 202,363 shares, or from a value of $1,732,419 to a value of $2,630,719; gain in collateral equity, $898,300; increase in loan, $205,137; gain, $693,163.

In addition to this, Pynchon & Co. will have a receivable against Harley Clarke for $452,134, against which they would have to deliver to him 93,162 shares of new common stock, leaving total loan of $1,485,422, against 67,454 shares new preferred at 24, $1,618,896, and 41,747 shares new common at 7, $292,229; making a total of $1,911,125.

M. W. D.

Does it not appear from this memorandum of January 7, 1931, that the $5,000,000 loan which was made to Pynchon & Co. as managers of the syndicate formed September 20, 1929, had not been repaid on April 30, 1930?

Mr. Dodge. I do not so understand it, Mr. Pecora. This is a very complicated memorandum, and I gratuitously say that I have tried to go over it with Mr. Hagen and it gave me almost a headache because it is so complicated——

Mr. Pecora. If it gave you a headache, and you prepared it, we certainly need some enlightenment on it.

Mr. Dodge. As I understand it, the actual syndicate loan was paid on April 15, 1930. Later on in the year of 1930 Pynchon & Co. borrowed additional money from the bank. That is what I understand. I was not an official of the bank at the time. Certain stock was pledged as collateral to that loan.

Mr. Pecora. Certain stock of the General Theatres Equipment Co.?

Mr. Dodge. Yes; including this syndicate stock. Pynchon & Co., as I remember, were anxious to clear up that syndicate and have the syndicate members pay. Some were willing to pay and some were not. In the meantime, Goldman Sachs had purchased Tucker, Hunter & Dulin, who were large participants in it. They had also, I think, purchased the stock of the American National Co. and the American Trust Co. of San Francisco. Goldman Sachs said they were willing to pay the liability of $1,251,000 provided the American Trust Co. loan, which the same syndicate had made, was paid at the same time; and Pynchon & Co. were trying to work out with myself and with Mr. Hagen—because I knew Mr. Ingold and he came to me to try to work it out—whether or not the payment of Goldman Sachs on that basis would be of benefit to Pynchon & Co. and, through Pynchon & Co., to the collateral which was in the bank at the time. It finally worked out, after this succession of figures here, that the actual amount of the loan at the time was increased to Pynchon & Co. by $200,000-odd, and the actual amount of collateral in the loan was increased by $900,000. So that the loan was strengthened to that amount. It was that that I wished to discuss with Mr. Wiggin.

Mr. PECORA. In this memorandum of January 7, 1931, you refer to an aggregate amount of loans made by the Chase Bank to Pynchon & Co. of $9,000,000.

Mr. DODGE. That is what I understood at that time, that the loan was a loan to Pynchon by the Chase Bank. That was in January 1931.

Mr. PECORA. You meant a new loan of $9,000,000 had been made to Pynchon & Co. as syndicate managers by the Chase Bank?

Mr. DODGE. This, I understand, was put on by the bank in the fall of 1930 as a broker's loan, and part of the collateral was some of this stock.

Mr. PECORA. Now, let us understand this. The first loan was a million and a quarter to Pynchon & Co. on July 20, 1929, and the next one was made on August 1, 1929, also a million and a quarter. That is correct, is it not?

Mr. DODGE. Yes.

Mr. PECORA. Those two loans were paid off on August 9, 1929?

Mr. DODGE. Yes.

Mr. PECORA. And then on August 23 a new loan of $4,000,000 was made to Pynchon & Co. just prior to the date when the original syndicate was to take up the original block of stock?

Mr. DODGE. I don't know that. I testified this morning that two and a half million dollars——

Mr. PECORA. You did a little while ago, this afternoon.

Mr. DODGE. No; but I mean, you are speaking now of the first $1,250,000 and the second $1,250,000.

Mr. PECORA. Making a total of two and a half millions.

Mr. DODGE. I am informed they were paid on August 9.

Mr. PECORA. Then on August 23 this loan of $4,000,000 was made to Pynchon & Co.?

Mr. DODGE. Yes.

Mr. PECORA. That was paid off on September 25, 1929?

Mr. DODGE. When the $5,000,000 loan was made.

Mr. PECORA. The $5,000,000 loan was made around September 20?

Mr. DODGE. Twenty-third; yes.

Mr. PECORA. Was that loan of $4,000,000 paid out of the proceeds of the $5,000,000 loan?

Mr. DODGE. Yes.

Mr. PECORA. The $5,000,000 loan was made for the account of the syndicate that was formed on September 20, 1929?

Mr. DODGE. That is correct.

Mr. PECORA. You said before that that loan was fully paid off on April 15, 1930?

Mr. DODGE. Yes, sir.

Mr. PECORA. In January 1931 you addressed this memorandum, marked "Exhibit No. 155", to Mr. Wiggin, in which you refer to this syndicate loan of September 20, 1929, apparently, because you say in your memorandum—

> Referring further to winding up of General Theatres Equipment common stock syndicate of September 20, 1929, of which Pynchon & Co. are syndicate managers, at a conference today with organization of Pynchon & Co., Leon

Johnston, Hagen, and myself, we believe that it works out as follows: The amount of this syndicate stock now pledged by Pynchon & Co. in Chase Bank loans to Pynchon & Co. of $9,000,000, is 133,263 shares.

There must have been some loans aggregating $9,000,000 that were made subsequent to the $4,000,000 loan of August 23, 1929?

Mr. DODGE. There was; but the loan of $9,000,000 made in November 1930 to Pynchon & Co. was a broker's loan, and in that broker's loan were included 133,000 shares of this syndicate stock, so that the loan of $9,000,000 was not solely made to the syndicate, as I understand it.

Mr. PECORA. Who was it made to?

Mr. DODGE. It was made to Pynchon & Co.

Senator COUZENS. How do you know that it was a broker's loan with other collateral than the General Theatres?

Mr. DODGE. Just what I have been told.

The CHAIRMAN. On those broker's loans, the interest was much larger than 6 percent, was it not? I have understood that they paid as high as 20 percent on broker's loan at about that time?

Mr. DODGE. Not on this loan, Senator. I will find out for you what the interest was on that $9,000,000 loan.

Senator TOWNSEND. The interest on broker's loans varies from day to day as to the rates on the market.

Mr. DODGE. Yes. The loans of 1929 got pretty high. The usual rate was, I think—well, I am not a banker; I am not connected with the bank; but I should say a special loan would be 6 percent, and probably a quick loan on marketable securities would be something over the Reserve bank rate—4 percent.

Mr. PECORA. Do you know the status of this $9,000,000 loan at the present time?

Mr. DODGE. No, sir.

Mr. PECORA. What was its status at the last time you knew anything about it?

Mr. DODGE. I never knew very much about it, Mr. Pecora.

Mr. PECORA. Do you know whether that $9,000,000 loan has been repaid in full?

Mr. DODGE. No, sir; I do not. My impression is it was not.

Mr. PECORA. Can you find out the status of that loan from data that is now available to you?

Mr. MUDGE. I do not think we have the details, Mr. Pecora. But the loan was never paid in full, and it was included in the claims proved against Pynchon & Co. in bankruptcy. I cannot give you the exact amount.

Mr. PECORA. Do you know how much of it was unpaid?

Mr. MUDGE. I cannot give you the exact amount.

Mr. PECORA. Well, approximately, Mr. Mudge; just give us a general idea.

Mr. MUDGE. We may be able to get that in a minute from some data. I do not know.

Senator TOWNSEND. All the loss in that loan has been charged off?

Mr. ALDRICH. Yes.

Mr. PECORA. Do you know the amount?

Mr. ALDRICH. I am not sure that it is the same loan because I have not looked at the details, but there was a loan, as you recall, in

the beginning of 1931, and the collateral was such that it could be sold and bought in by the bank, and the loan has been written down so that the value of it is simply the market value of the collateral still held against it.

Senator TOWNSEND. In other words, the loss has been taken?

Mr. ALDRICH. The loss has been taken.

Mr. PECORA. What is the amount, Mr. Mudge?

Mr. MUDGE. The amount at which the claim was allowed in the bankruptcy proceedings was slightly over $5,300,000.

Mr. PECORA. Then that much of the loan remained unpaid at the time Pynchon & Co. went into bankruptcy, is that right?

Mr. MUDGE. That is right.

Mr. ALDRICH. There was more.

Mr. PECORA. What is that?

Mr. ALDRICH. There was more. We can give you the exact figures. There was more of it unpaid that has been written down.

Mr. PECORA. Yes. Now, Mr. Dodge, I want to call to your mind the $6,000,000 of debenture bonds or notes that were issued by General Theatres Equipment at the outset of its incorporation, and which was sold to the five members of the original purchase group, the banking group, at 90. Those are the debentures that had a convertible privilege?

Mr. DODGE. Yes, sir.

Mr. PECORA. A convertible privilege entitling the holders to convert each $1,000 bond into 30 shares of the common capital stock of General Theaters?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was there a syndicate formed by the bankers to trade in those bonds after they acquired them?

Mr. DODGE. I understand there was a trading account formed at the same time for 10 percent of the amount; that would be $600,000 par value of the bonds.

Mr. PECORA. And what was the purpose of that trading account?

Mr. DODGE. That was most usual, Mr. Pecora.

Mr. PECORA. To support the market?

Mr. DODGE. To support the market; or some time the bonds, the $6,000,000, were over-sold; it gave a position in the market to support them.

Mr. PECORA. Who were the participants in that trading account?

Mr. DODGE. The originals.

Mr. PECORA. The original five members?

Mr. DODGE. The original five members.

Mr. PECORA. The original five members of the original terms group?

Mr. DODGE. Yes; the original account.

Mr. PECORA. Those were the bonds sold to the public by this group at 99 and interest?

Mr. DODGE. Yes.

Mr. PECORA. On July 18, 1929?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now the General Theatres Equipment got from the bankers $5,400,000 for these notes?

Mr. DODGE. And accrued interest.

Mr. PECORA. And accrued interest. Is that the money that was used to enable the General Theatres Equipment to purchase from Harley Clarke those four lamp companies that he testified about last week for an aggregate of $3,000,000 cash?

Mr. DODGE. Part of it; yes.

Mr. PECORA. And was it out of that sum of five million four hundred thousand and odd dollars that a payment of $2,000,000 in cash was made to William Fox?

Mr. DODGE. I presume so; yes, sir.

Mr. PECORA. Have you by any chance been able to learn since you were on the stand last Friday the reason for that $2,000,000 payment to Fox?

Mr. DODGE. No, sir.

Mr. PECORA. You recall the testimony of Clarke last week to the effect that that $2,000,000 was paid to Fox because Fox had acquired some interest in the Mitchell Camera Co. which General Theatres Equipment wanted to acquire?

Mr. DODGE. Something to that effect.

Mr. PECORA. Well, you remember you yourself testified last Friday afternoon that you had learned at the time of the formation of the General Theatres Equipment that Fox and Harley Clarke had been in competition with each other to acquire the assets of the Mitchell Camera Co.?

Mr. DODGE. Yes, sir.

Mr. PECORA. I have sent for certain exhibits which are now in the Printing Office. Meanwhile I want to say that one of the exhibits put in evidence last Friday afternoon, which have been produced by Mr. Clarke, and which purported to consist of a duplicate original of the agreement whereby the assets, the property of the Mitchell Camera Co., were turned over for $1,475,000, shows that that purchase was made by Harley L. Clarke and not by Fox. Did you know that before?

Mr. DODGE. I would not be surprised, but I did not know that before, no. I have not got the true story of that, Mr. Pecora.

Mr. PECORA. Well, why didn't you get the true story of it when you, sitting as a director of General Theatres Equipment Co., in July 1929, voted to pay to Harley Clarke for the assets of the Mitchell Camera Co. $3,100,000, which is what Harley Clarke says he got from the General Theatres Equipment Co. for the assets of the Mitchell Camera Co.?

Mr. DODGE. I think I testified last Friday that as the bankers we were interested in seeing that the one half interest in the Grandeur, Inc., was acquired for the $2,000,000, and that the four lamp companies were acquired for the $3,000,000. And that is as far as we were concerned—that was all we wanted to know. Now, what Mr. Clarke's transactions were with Mr. Fox, or what Mr. Clarke had on his books showing how those results were accomplished I never knew, and I do not know today. I have not seen Mr. Clarke since then, or anybody else who could explain it.

Mr. PECORA. Mr. Clarke testified here Friday afternoon that when he set out prior to the formation of General Theatres Co. to acquire the assets of those four lamp companies and of the Mitchell Camera Co. of California, he did so as an agent of the General Theatres

Equipment, or what was subsequently organized under the corporate name of the General Theatres Equipment. Do you recall that testimony?

The CHAIRMAN. As I remember, Mr. Dodge, it was considered important at that time to interest Mr. Fox because he controlled some 500 theaters, and it was very important to get these machines in use in these theaters. That was one reason for getting him in.

Mr. DODGE. The contract with Mr. Fox of the Fox Theatres Co. was a very important item in the whole transaction.

Mr. PECORA. Well, until those exhibits are returned here I will examine you on the trading syndicate that was formed in connection with the $6,000,000 of debentures that the banking group purchased at 90.

Mr. DODGE. All right, sir.

Mr. PECORA. Now when was that first trading account terminated? Did you give the date of the termination of that first trading account in the bonds?

Mr. DODGE. On the same day that the purchase group of the General Theatres Equipment 6 million dollars. 15-year 6-percent gold debentures was terminated. That is December 18, 1929.

Mr. PECORA. Now on October 16, 1929, there was a second trading account formed to deal in these debentures?

Mr. DODGE. Yes, sir.

Mr. PECORA. Who were the participants?

Mr. DODGE. Chase Securities Corporation, Pynchon & Co., West & Co., W. S. Hammons & Co., and Harley L. Clarke.

Mr. PECORA. What was the object of that second trading syndicate?

Mr. DODGE. At that time the debentures were selling I think around 160 or 165, and it was in the early part of October. I think I can be perfectly frank in answering that that syndicate was formed to make money.

Mr. PECORA. Through trading operations in the market?

Mr. DODGE. No, sir. Not to trade, but as a purchase syndicate to make money. The debentures were selling then at 165. They had a conversion privilege of 30 shares for every $1,000 bond, which would mean that every point the stock went up why these debentures went up 3 points. And I will be still more frank and say that I think, when I say "to make money", that it was a speculative account in that the group got together and decided and felt that the debentures probably would go higher. The conversion privilege, as I remember it, did not become available, until January 1.

Mr. PECORA. 1930?

Mr. DODGE. 1930. Six months after they were issued. And it was not as though we were buying stock, because the loss was limited, as we felt, at 100 or 110. If the stock went down our loss was limited. If it went up, of course, the profit was unlimited. And, frankly, that was the reason.

Mr. PECORA. And when that syndicate was formed on October 16, 1929, what was the common stock quoted at in the market?

Mr. DODGE. On the 15th it was quoted at 58¾. If we say 59—three times that would be—that made the parity on the debentures 177.

Mr. PECORA. And do you know what the quotation was on these debentures on October 15? I have it as being 170½.

Mr. DODGE. I believe that is correct.

The CHAIRMAN. The stock was quoted at what?

Mr. DODGE. 59. 58¾–59.

Mr. PECORA. Now, the prices of those debentures were influenced primarily by the equities of the common stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the equities of the common stock in turn were influenced by the operations of the syndicate that had been formed under the management of Pynchon & Co.; were they not? Tell us frankly, Mr. Dodge.

Mr. DODGE. I cannot get away from the idea that the market quotations were influenced primarily by the public demand. It was not more than 2 weeks afterward that we ran into the panic, and public demand ceased; in fact they turned around from buying wildly and sold wildly, and General Theatres stock, I think, went from 59 down to the low 30's in the panic. There was nothing that the syndicate could have done to have maintained that market in the face of what the public wanted to do.

Mr. PECORA. But prior to that panic did not the syndicate operations influence the market quotations of this stock?

Mr. DODGE. As far as stabilizing the market; yes.

Mr. PECORA. I do not believe I have asked you for a definition of the term "stabilizing the market", so I will ask you now what you mean by that?

Mr. DODGE. So many people have tried to answer.

Mr. PECORA. Well, just pay no attention to the answers anyone else has made in the past. Give us your answer or the way in which you used the term just a moment ago of "stabilizing the market."

Mr. DODGE. If as a banker I am offering securities to the public at a given price, say, $100 a share, and a few days afterwards those securities which I have valued as being worth to the public $100 a share, having no support, sell at 95, $94 or $95 a share, the investor who buys that security from me will think that I have tried to put something over on him. He won't understand that there was no support.

And therefore, in the sale of bonds, a block, say, of $5,000,000 of bonds, it was customary with the bankers to have a trading account of, say, 10 percent of the amount of the liability, and during the period of distribution, which was done generally through a countrywide syndicate, that trading account bought bonds that came in the market and stabilized the price until this distribution was effected.

I do not think that the law of supply and demand applies entirely when you are trying to sell securities. You are selling them as a merchandizing proposition, until those securities are sold and the people who have them know whether they want to buy or whether they want to sell. It is a merchandising proposition.

Senator COUZENS. So, while the merchandising proposition is going on it is not an open and free market and the public do not fix the price, do they?

Mr. DODGE. The public does not fix the price except as they have the information placed before them and are asked whether they want to buy the merchandise or not.

Senator COUZENS. But you and other witnesses have testified that we can rely upon the public, the public is usually good in fixing the value of securities. In the face of what you have just said, that cannot be so.

Mr. DODGE. The public, Senator, in this particular case, that is, the investor, can always sell at anytime. As soon as he bought the securities he could turn around and resell them.

Senator COUZENS. Yes; but as long as you are standing by, as you say, to pick up these shares and the shares are bought up by a ring or a group, why, then it is not a free and open market, is it? He does not take what the market gives; he takes what you are willing to give to maintain the market?

Mr. DODGE. It is a free and open market to him.

Mr. PECORA. He thinks it is.

Senator COUZENS. He thinks it is.

Mr. DODGE. But he can sell if he wants.

Senator COUZENS. Only as long as you are willing to let him sell, that is all, because when you withdraw your support, why then the market can go anywhere.

Mr. DODGE. Up or down.

Senator COUZENS. Yes; but for the time being, while you are operating, it is not an open and free market. I do not care what the testimony is here, you cannot convince this committee, I think, of that as a fact.

Mr. PECORA. The operations of this second trading syndicate in the debentures resulted unprofitably, did they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. As a result of the market collapse of October 1929?

Mr. DODGE. Yes, sir.

Mr. PECORA. Is that right?

Mr. DODGE. Yes, sir.

Mr. PECORA. And after that market collapse were the debentures called for redemption by General Theaters Equipment?

Mr. DODGE. In the financing of April 1930 they were; yes, sir.

Mr. PECORA. And they were called at the call price of 110?

Mr. DODGE. Yes, sir.

Mr. PECORA. And they bore 6 percent interest, didn't they?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, these debentures were issued to the bankers at 90 in July 1929?

Mr. DODGE. Yes, sir.

Mr. PECORA. They were called at 110 in April 1930?

Mr. DODGE. Yes, sir.

Mr. PECORA. And 6 percent interest on them was paid meanwhile?

Mr. DODGE. Yes, sir.

Mr. PECORA. So that virtually the GTE, for that bit of financing, $6,000,000, paid around 26 percent interest, did it not? I mean it amounts to the same thing?

Mr. DODGE. A large amount of the debentures were converted into stock. The reason the debentures were called was to force conversion. In other words, if the stock was selling at a higher price than the equivalent of 110 on the basis of 3 shares for 1, instead of

waiting for $110 a share the debenture holder might have converted and sold his stock instead.

But in the financing of 1930 it is all part of a very large piece of financing. Thirty million dollars of additional debentures were issued, and it was necessary to have this six million called as part of the cost of that financing, not really the cost of the original financing.

Mr. PECORA. This piece of financing resulted in the GTE paying to the bankers or selling to the bankers six millions of debentures at 90, retiring them at 110 inside of a year, and paying meanwhile 6 percent interest? Isn't that the way it worked out?

Mr. DODGE. At the time the 6 millions of debentures were sold at 90 to the bankers there was no anticipation that they would be called. It was only because the company ran into the larger deal of 1930 that it was necessary to call them.

Mr. PECORA. The bankers still sat in April 1930 on the board of directors of the GTE, did they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And it was their decision which prompted the calling of these debentures at 110 in April 1930?

Mr. DODGE. In connection with the issuance of 30 millions of debentures in 1930, which was in connection with the acquisition of the Fox Film.

Mr. PECORA. Now I have had returned to me from the printers in the last few minutes the exhibits that were put in evidence last Friday afternoon upon their production here by Mr. Clarke. I want to call your attention to one of them, the one marked "Exhibit No. 143," which is a copy, purports to be a copy, of an agreement made on June 6, 1929, by and between H. F. Boeger and George A. Mitchell, called the sellers, and H. L. Clarke, called the buyer, under the terms of which, generally speaking, the sellers agreed to sell to the buyer for $1,475,000 cash all of the assets and property of the Mitchell Camera Co. of California, including all patent rights and claims that it had. Will you look at the exhibit?

Mr. DODGE (after perusing the exhibit). I have read it.

Mr. PECORA. Does that refresh your recollection with regard to any information you acquired at the time that you as one of the directors of the General Theatres Equipment in July 1929 voted to pay $3,100,000 for the Mitchell Camera Co.'s property, including these pamphlets that you speak of?

Mr. DODGE. Did the minutes show that we voted to pay $3,100,000?

Mr. PECORA. Mr. Clarke's testimony was to that effect. The directors' minutes do not seem to show exactly what the situation was. That is why I am asking you now as one of the directors.

Mr. DODGE. Well, at that time that contract was signed, the General Theatres Equipment was not formed, of course.

Mr. PECORA. Oh, no; but Mr. Clarke has testified that he went out and acquired these properties as a representative of the corporation which eventually was formed under the corporate name of General Theatres Equipment, and you also testified that prior to July 11, 1929, which was the date of incorporation of the General Theatres Equipment, you participated with others in a series of conferences

that lasted around 2 months or more, at which the plans were discussed and agreed upon for creating the General Theatres Equipment.

Mr. DODGE. Yes. I do not want to be technical, Mr. Pecora. Mr. Clarke did not act as agent for the General Theatres Equipment, and it was not formed. He could, however, purchase these assets under an option agreement for the benefit of the new company to be formed if it was formed.

Mr. PECORA. He testified that that was the fact, and so did you.

Mr. DODGE. I do not know anything about $3,100,000. All I know is that the Grandeur Co. and its assets, one half of it was to be bought for $2,000,000. Now that is the first time I have ever seen that copy of that contract.

Mr. PECORA. Didn't Clarke produce before the directors the documents that showed what he had paid for these various assets, these lamp companies and Mitchell Co., which General Theatres Equipment was formed to take over?

Mr. DODGE. I don't think so.

Mr. PECORA. You referred a few minutes ago to the issue of $30,000,000 of debentures in connection with the 1930 financing of General Theatres Equipment. Will you tell the committee in your own way the facts with regard to that issue?

Mr. DODGE. In December 1929, after the panic, Mr. Clarke told me as a director of the General Theatres that he understood that Mr. William Fox and his companies, or his company, were very much extended.

Mr. PECORA. That is the Fox Film Co.?

Mr. DODGE. Fox Film Co., and the Fox Theatres also—through the purchase of the control or a large amount of the stock of the Loew Corporation and some English properties, that is, an interest in it.

Mr. PECORA. A little louder, please.

Mr. DODGE. An interest in the Gaumont Pictures Co. of Great Britain; and that these purchases had been made on short time credits which were coming due, and that unless Mr. Fox was able to finance these obligations the Fox Co. would get into very serious trouble.

Mr. Fox had discussed the matter with him evidently, or at least his attorneys had. Halsey Stuart & Co. were the bankers for the Fox Cos. at that time. They had what is called a preferential agreement to do the financing for Mr. Fox. As a matter of fact, at that time Halsey Stuart & Co. had issued to the public 12 millions of notes which matured in the early part of 1930, the proceeds of which were used as part payment for the block of Loew, Inc. stock purchased from the Loew family. An additional $15,000,000 had been advanced by the Electrical Research Corporation, and those notes would come due shortly.

But Fox had also, in addition to the original family holdings of the Loew stock, bought in the open market over 200,000 shares of Loew stock, which he was carrying through brokers, and in the panic during the drop of the stock the brokers were very much worried.

Mr. Clarke told me at that time that he was worried about the situation, because if the Fox Film Corporation failed it would probably affect adversely the whole film industry; and, of course, would then affect the General Theatres Equipment, which was selling equipment to the film industry, and especially it would affect the General Theatres Equipment because the Fox Film Corporation would then be unable to carry out its intention to purchase these wide film projectors which were mentioned in the contracts which were read last Friday.

He told me that he thought that the General Theatres should have a very sympathetic view of the whole situation; as a matter of fact, asked me if I would discuss the matter with Mr. Stuart of Halsey, Stuart & Co., who was very much worried about the 12 million that was being carried.

At that time there was a suggested plan to solve some of the problems of Mr. Fox. I think the General Theatres was figuring on putting some 18 millions of dollars into it, and through senior securities there was to be raised an additional 20 millions of dollars, which, together with the agreements reached with some of the creditors, would have probably put the Fox Films Co. in a more sound condition through the sale of a part of its capital assets.

The figures which we looked into at that time of the Fox Film Co. led us to believe that the company over a period of 10 and 15 years had been a successful and a profitable concern and that its troubles at that time were caused only because it had capital obligations coming due which it could not meet, and these capital obligations of Fox Film and the Fox Theatres combined amounted at that time to something around 90 million dollars. I think that was the sum, somewhere around 90 millions of dollars.

The suggestions which Mr. Clarke made, or the lawyers who were then active for Mr. Clarke, I think the firm of Hughes, Schurman & Dwight at that time, were not acceptable largely because it meant a sale of some of this Loew stock at a price below cost, and——

The Chairman (interposing). Do you mean by "low" stock, miscellaneous stock—stock of various kinds and not of any particular kind?

Mr. Dodge. No; I meant the stock of Loew's, Incorporated. The suggestion was not acceptable, but a solution was supposed to have been arrived at at that time by a control of the stock in the Fox Film and the Fox Theatres, the B stock, so-called, which was owned by Mr. Fox, being put into a voting trust, of which Mr. Fox was to be one of the voting trustees, Mr. Harry Stuart, of Halsey, Stuart & Co., was to be another trustee, and Mr. Otterson, of the Electrical Research Corporation was to be another trustee. I understand that that voting trust agreement was entered into, and in consideration of that, Halsey, Stuart & Co., who were the bankers of the company and Mr. Otterson, who represented the Electrical Research Corporation, which was selling a large amount of sound equipment to the industry, were willing to assist Mr. Fox.

That agreement, however, was repudiated by Mr. Fox, but afterwards I believe they effected a transfer of the Loew's stock from the brokers' loans into some banks, so that it was a more permanent loan and the brokers were not embarrassed.

That precipitated a failure of Mr. Fox to live up to his agreement, precipitated financial trouble, as the creditors wanted to be paid. A large amount of those notes, big obligations, were coming due, and Mr. Fox tried in his own way to raise funds to pay off the obligations, but failed to do so. And eventually, some time in January or February, a receivership was asked for, in the United States Circuit Court, I believe.

Mr. MUDGE. United States District Court.

Mr. DODGE. Well, in the United States District Court, under Judge Coleman, I believe. Judge Coleman did not want to see such a large, valuable, and prosperous enterprise go on the rocks if it could be worked out, and I think he very wisely tried to see if he could not straighten out the differences between Mr. Fox and his bankers.

In the meantime Chase Securities Corporation and General Theatres Equipment—and the Chase Securities Corporation had nothing to do with the business; and I find a memorandum, of which I think you have a copy, to Mr. Wiggin, telling that we would not be interested in the situation unless some comprehensive plan could be worked out, for this whole situation involved $90,000,000, unless it could be finally worked out.

Mr. Fox engaged the services of Samuel Untermeyer, and refused to have anything to do with his bankers, Halsey Stuart & Co., or the Electrical Research Corporation. Mr. Untermeyer did succeed in having Bancamerica-Blair Corporation, Dillon, Reed & Co., and Lehman Brothers make a proposition to finance the Fox Film Corporation. And at the same time Halsey Stuart & Co. under the so-called trustee plan, as the stock was still deposited under the permanent agreement, the voting agreement, also put forward a plan. A meeting was held of the Fox Theatres stockholders. They approved the Bancamerica-Blair Corporation and Dillon & Reed plan, but that was immediately attacked by the trustees. Both sides began attacking, and I think there were suits in almost every court in New York City, and counter suits. Until finally in April the situation became such that both the bankers were willing to withdraw because they could not come to any agreement. Now, we have come up to——

Mr. PECORA (interposing). To April of 1930.

Mr. DODGE. To April 1, 1930.

Mr. PECORA. Before you proceed any further let me say: You referred to a memorandum you sent to Mr. Wiggin. I show you what purports to be a photostatic copy of a memorandum dated December 2, 1929. Will you look at it and tell me if that is a true and correct copy of the memorandum you referred to?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence and ask that it may be made a part of the subcommittee's proceedings.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the record.

(A paper headed "Memorandum, Dec. 2, 1929", was marked "Committee Exhibit No. 156, Nov. 21, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum which has been marked "Committee Exhibit No. 156" of this date, reads as follows [reading]:

MEMORANDUM, DECEMBER 2, 1929

TO MR. WIGGIN:

Referring to Fox Films, I understand that both Harley Clarke and Harry Stuart called you up on Friday. I was in constant communication with Harley Clarke. I have been constantly in touch with Halstead Freeman about this matter and we have consistently refused to take the leadership in any reorganization or to get into this mess in any way unless it was part of a comprehensive plan which looked as though it would succeed. We have all the figures and knowledge on this situation here and studied them over the last week. The only way we should be interested would be to endeavor to work out something for the General Theatres Equipment. To this end, I worked out a plan which I gave to Harley Clarke to use as his own. He is coming down this morning and says he has a price on the Fox Film Co. and Fox Theatre Co. "B" stocks, which are the controlling stocks. After I find out what is in his mind, I will discuss the matter further with you. This is a most complicated and difficult situation and I am going to proceed very slowly on it.

M. W. D.

Now you may go ahead. You have reached the point in your narrative about this 30 million dollars financing of April 1930, which took you up to about the 1st of April. Will you resume at that point and continue?

Mr. DODGE. Somewhere around the 1st of April it looked as though it was inevitable that the Fox Film Co. and the Fox Theatres Co. would go into the hands of receivers, at great loss to the stockholders, and possibly a loss to the creditors. Mr. Clarke at that time had conversations with Mr. Fox with a view of buying out his controlling interest, so that Mr. Fox would stay out of the picture, and——

Mr. PECORA (interposing). Which was the "B" stock?

Mr. DODGE. Yes.

Mr. PECORA. Which had the voting rights?

Mr. DODGE. Yes, sir.

Mr. PECORA. All right. You may continue.

Mr. DODGE. Those conversations were had with him, and resulted in the purchase from Mr. Fox of his interest in both of those companies, which was about 50 percent of the Fox Film "B" stock, and about 100 percent of the Fox Theatres stock, for $15,000,000.

Mr. PECORA. Which was bought by the GTE?

Mr. DODGE. Which was bought by the GTE, yes.

Mr. PECORA. Have you before you the minute book of the Board of Directors of the General Theatres Equipment Corporation, covering the month of April 1930?

Mr. DODGE. I believe they are here.

Mr. PECORA. Will you get the meeting of April 7, 1930, and refer to pages 91 and 92, my record shows?

Mr. DODGE. Do you want me to read this?

Mr. PECORA. Oh, no. It is too long a document to be read. With the minutes of the meeting of the board of directors held April 7, 1930, before you, can you refresh your recollection and give this subcommittee when that agreement was entered into between General Theatres Equipment and Fox?

Mr. DODGE. April 7, 1930.

Mr. PECORA. Under that agreement Fox agreed to sell to General Theatres Equipment 50,101 shares of Fox Film class B common

stock, which was more than a majority of the outstanding common stock, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And 100,000 shares of Fox Theatres class B common stock, which were all of the shares outstanding, for $15,000,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. And other considerations that were to be paid or granted by General Theatres Equipment to Mr. Fox. Do you recall that there were other considerations besides the $15,000,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. Can you refer to them briefly? The agreement in question, Mr. Dodge, as you know, is a very lengthy document.

Mr. DODGE. Yes; and I do not know that I could refer to them briefly for that reason.

Mr. PECORA. Now, let me see if this constitutes your recollection as a fair and substantial summary of it: Under this agreement Fox, as the vendor, was to deliver to General Theatres Equipment the written resignations of seven directors. Do you recall that?

Mr. DODGE. Yes.

Mr. PECORA. And certain licensing agreements then in existence between the American Tri-Ergon Corporation, licensor, and Fox Theatres, and so forth, as licensee. Do you recall that?

Mr. DODGE. I do not recall what they were, Mr. Pecora, but I recall that there was something of that kind. And I see it here.

Mr. PECORA. And Fox agreed to hold his 50 percent of the capital common stock of Grandeur, Incorporated, and to organize a new company to hold that 50 percent of his stock, to indemnify the Fox Film and the Fox Theatres Companies against 50 percent of the amount of certain possible claims.

Mr. DODGE. I will have to refresh my memory on that. There was something of that kind. Yes, that is right.

Mr. PECORA. And General Theatres Equipment agreed that the Fox Theatres, Inc., would repurchase from the Bankers Securities Corporation, and the Pennsylvania Corporation 87,000 shares of the Fox Theatres class A stock at $25 and interest, or for about $2,320,000. Do you recall that phase of it?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the payment for that was to be made by a 60-day collateral note dated April 7, 1930.

Mr. DODGE. Yes, sir.

Mr. PECORA. And GTE also agreed to purchase 150,500 shares of Loew's, Inc., common stock, and an equity of 60 percent of $2,000,000 mortgage on the company's building in Philadelphia. No; that was collateral for the 60-day note. GTE agreed that Fox would be continued as a director of his companies for 5 years from May 1, 1930. Do you recall that provision?

Mr. DODGE. That is in the contract?

Mr. PECORA. Yes.

Mr. DODGE. Yes, sir.

Mr. PECORA. And GTE agreed to procure for Fox an employment contract with Fox Films, Inc., for five years at $500,000 a year, to be paid even if Fox died. Do you recall that provision?

Mr. DODGE. That is in the contract; as chairman of the Advisory Committee.

Mr. PECORA. And the GTE agreed to cause the Fox Film and Fox Theatres Companies to pay the fees of Mr. Untermyer and 10 other lawyers. Do you recall that provision?

Mr. DODGE. Yes, sir. That is in the contract.

Mr. PECORA. There is a further provision that G.T.E. would cause Fox Films and Fox Theaters Cos. to employ for 3-year periods 10 persons to be named by William Fox, who were members of his family, and so forth. Do you recall that? You will find that on page 100 of the minute book.

Mr. DODGE. Page 9 says [reading]:

That the purchaser will procure Theatres and Films to offer to certain of their employees, not exceeding 10 in number, to be designated by the vendor, contracts of employment (for services now being performed by them and at salaries not less than those they are now receiving) for a period of 3 years from May 1, 1930.

That is in that contract. I do not know whether they were relatives of Mr. Fox or not.

Mr. PECORA. Do you remember one Jack Leo, a brother-in-law of Fox, who was included among those 10 persons?

Mr. DODGE. No, sir; I do not remember that.

Mr. PECORA. This agreement also provided that the name "Fox" was to remain on all theaters of the Fox Film and Fox Theaters for two periods of, respectively, 2 years and 3 years from May 1, 1930.

Mr. DODGE. Yes, sir. That is in the contract.

Mr. PECORA. And also provided that during those same two periods all pictures made by Fox Film, Inc., were to be captioned "William Fox presents."

Mr. DODGE. Yes, sir.

Mr. PECORA. And the G.T.E. also agreed to pay William Fox $3,000,000 for assignment of his claims for salary from the Fox Films, such payment to be made by 12 notes, each for $250,000, dated April 7, 1930. Do you find that at pages 101 and 102 of the minutes?

Mr. DODGE. That reads (reading):

The vendor has received no compensation for acting as chief executive officer of Theatres since its organization or for acting as chief executive officer of Film for the past three years or more and the vendor has received no reimbursement of expenses incurred by him during such periods respectively or for losses sustained in sales of securities owned by him to prevent the sacrifice of stock of Loew's, Incorporated, owned by Theaters.

I do not think it refers solely to the salary which had not been paid.

Mr. PECORA. That sum of $3,000,000 G.T.E. agreed to pay Fox in addition to the $15,000,000 consideration which has already been referred to, is that not true?

Mr. DODGE. Yes; they agreed to reimburse him for his losses.

Mr. PECORA. It was not an agreement to reimburse him for his losses. They agreed to pay him $3,000,000 on account of his claims for back salary and losses.

Mr. DODGE. Yes.

Mr. PECORA. The losses that he claimed to have sustained in the sale of securities owned by him, to prevent, as the contract says, the sacrifice of stock of Loew's, Inc., owned by Fox Theatres.

Mr. DODGE. Yes, sir.

Mr. PECORA. G.T.E. also agreed to continue to pay the premiums on $3,500,000 of life-insurance policies carried by Fox Film, Inc., on the life of William Fox.

Senator TOWNSEND. Was the policy assigned?
Mr. MUDGE. It was carried by Fox Theaters.
Mr. PECORA. The policies were pledged at the time.
Mr. DODGE. They were made payable to Fox Theatres or Fox Film, not to Fox himself.
Mr. PECORA. Yes: and the G.T.E. agreed to cause the Fox Film Co. and the Fox Theatres Co. to indemnify William Fox from all liability and expenses under a suit brought by the United States against the Fox Film, Fox Theatres, and William Fox, for alleged violation of the Clayton Act.
Mr. DODGE. Yes, sir.
Mr. PECORA. Now, as part of this agreement, was not a letter sent to William Fox under date of April 5, 1930, by General Theatres Equipment, which you find at page 110 of the minute book?
Mr. DODGE. The minute book shows that a letter was sent to William Fox on April 5.
Mr. PECORA. And that letter was part of the consideration upon which this agreement of April 5 was based, was it not?
Mr. DODGE. An essential part of the understanding, it says.
Mr. PECORA. I will read that letter into the record from the copy which I have of it, and you follow me with the original and correct me if I misread it. [Reading:]

APRIL 5, 1930.

WILLIAM FOX, Esq.,
270 Park Avenue, New York City.

DEAR SIR: Referring to the agreement bearing like date herewith, and entered into between you and General Theatres Equipment, Inc., we recognize that it is an essential part of the understanding on which you have sold your shares to General Theatres Equipment, Inc., that you shall participate to the extent of 10 percent in any purchase or underwriting by General Theatres Equipment, Inc., or Harley L. Clarke of stock or stock warrants of any kind, of Fox Film Corporation and/or Fox Theatres Corporation in connection with the financing of those companies presently to be undertaken, and that we will use our best efforts and endeavors to increase your said interest up to an additional 10 percent.

This letter is to evidence the definite agreement of both the undersigned that you are entitled to a participation as above set forth.

Very truly yours,

GENERAL THEATRES EQUIPMENT, INC.,
H. L. CLARKE, *President.*

Mr. DODGE. Yes, sir.
Mr. MUDGE. There is part of it that you left off.
Mr. PECORA (reading):

Approved, H. L. Clarke.

Did not Fox receive $3,000,000 in lieu of this 10 percent interest referred to in this letter of April 5, 1930, from General Theatres Equipment?
Mr. DODGE. Eventually, in August, I think.
Mr. PECORA. On August 13?
Mr. DODGE. My understanding at the time was that Mr. Fox was entitled to 10 percent of 1,600,000 shares. Mr. Fox and Mr. Untermyer claimed that Mr. Fox was entitled to 20 percent, or 320,000 shares of the stock.
Senator COUZENS. How did they arrive at that 10 or 20 percent, do you know?
Mr. DODGE. Under the terms of this agreement, they said they were entitled to 20 percent. Meantime the stock had gone way up.

and at the time that the other 90 percent of the stock was ready to be paid for, Mr. Fox did not appear to take up his 10 percent, and the other 10 percent was taken up for him.

Mr. PECORA. Who negotiated this contract, Mr. Clarke and Mr. Fox?

Mr. DODGE. Mr. Clarke.

Mr. PECORA. You did not participate in the negotiation of this contract?

Mr. DODGE. No, sir. I never met Mr. Fox.

Mr. PECORA. But you, as one of the directors, approved it.

Mr. DODGE. Yes, sir.

Mr. PECORA. Without having studied it.

Mr. DODGE. No; I would not say that. I was told all the important facts about it.

Mr. PECORA. By Mr. Clarke?

Mr. DODGE. Yes.

The CHAIRMAN. The committee will now take a recess until 10 o'clock tomorrow morning.

(Whereupon, at 4 p.m., Tuesday, Nov. 21, 1933, the subcommittee adjourned until 10 o'clock the following morning.)

COMMITTEE EXHIBIT NO. 139, NOVEMBER 17, 1933

CHICAGO, ILL., *June 30, 1929.*

J. E. MCAULEY, Esq.,
Chicago, Ill.

DEAR SIR: This will confirm the arrangement between us superseding all previous agreements. You agree to sell or cause to be sold to the undersigned and/or purchasers designated by the undersigned, all of the capital stock of The J. E. McAuley Manufacturing Co., an Illinois corporation, at and for the sum of $1,131,422.93 (subject to the reservation and deposit in escrow of $150,000 thereof, as hereinafter stated. Contemporaneously with the payment therefor you shall pay said corporation the sum of $16,352.05, owing by you to said corporation.

It is further understood and agreed that any liabilities of said The J. E. McAuley Manufacturing Co., at June 30, 1929, in excess of $28,575.87 shall be paid and discharged by you.

It is further understood and agreed that the business of said The J. E. McAuley Manufacturing Co. has since June 21, 1929, and will be after the date thereof, conducted in the usual and ordinary manner and that no unusual or extraordinary expense will be incurred and that no dividend has been declared subsequent to June 21, 1929, and that no dividend will be declared and/or paid after the date thereof, it being the intent hereof that the net earnings of said corporation accruing after June 21, 1929, shall remain in the corporation until the consummation of the purchase of the capital stock of said corporation as herein provided.

It is further understood and agreed that the sum of $150,000 shall be withheld from the purchase price for said capital stock and that said sum of $150,000 shall be invested in securities approved by the undersigned, which securities shall be placed in escrow with the Continental Illinois Bank & Trust Co., Chicago, Ill., for a period of 6 years from the date of payment for said capital stock, for the purpose of indemnifying the undersigned and/or his assigns against any and all liabilities of said The J. E. McAuley Manufacturing Co. in excess of said sum of $28,575.87 hereinabove mentioned. Said escrow agreement shall be in form mutually satisfactory to us.

If the foregoing is acceptable to you please indicate your acceptance by signing below, which will constitute a contract between us.

H. CLARKE.

Accepted.

(Signed) J. E. MCAULEY.

COMMITTEE EXHIBIT No. 140, NOVEMBER 17, 1933

This agreement, made this 27th day of April 1929, by and between Clarence S. Ashcraft and Mary G. Ashcraft, his wife, both of Los Angeles, Calif., for themselves jointly and severally, hereinafter called the sellers, and H. E. Van Duyne, also of Los Angeles, Calif., hereinafter called the buyer.

WITNESSETH

1. The sellers hereby make the following representations and warranties, which warranties shall survive the purchase if made hereunder:

(*a*) That they are copartners, trading under the name and style of Ashcraft Automatic Arc Co., hereinafter sometimes referred to as the partnership; that said copartnership owns a business of manufacturing and selling electric arc lamps, located at Los Angeles, Calif.

(*b*) That the gross sales of the partnership for the year ended December 31, 1928, were not less than $131,385, and that the net earnings of the partnership, after depreciation, taxes, income taxes, and other charges including salaries, for the 12 months ended December 31, 1928, were approximately $35,479.

(*c*) That the accounts receivable and physical assets of the partnership, including in such physical assets furniture, fixtures, jigs, dies, tools, patterns, machinery, and merchandise on hand at the date of the inspection thereof, as hereinafter provided, and at the date of the consummation of the purchase of the property, business, and assets of the partnership, as hereinafter provided, will be approximately $85,200 and the liabilities approximately $24,000.

(*d*) That the partnership owns an assignable license to manufacture and sell electric arc lamps under the following letters patent:

General Electric licenses.

Heinrich Beck No. 1,029,787, dated June 18, 1912.

Heinrich Beck No. 1,313,666, dated August 19, 1919.

Heinrich Beck No. 1,086,311, dated February 3, 1914.

These licenses are for motion picture purposes only.

Clarence S. Ashcraft Patent No. 1,684,655, dated September 18, 1928.

2. In consideration of the sum of $10,000, receipt whereof is hereby acknowledged by the sellers, the sellers hereby grant the buyer the right and option to purchase at any time within 90 days from the date hereof, subject to the verification of the buyer, as hereinafter provided, of the foregoing representations, and each of them, all of the property, business, and assets of every kind and nature of the partnership, including therein all of the property described in subparagraph (*c*) of paragraph 1 hereof, and all claims, insurance, securities, contracts, agreements, leases, leasehold interests, licenses, books of account, records, files, documents, trade marks, trade names, trade rights, patents, patent rights, held, owned, possessed, or exercised by the sellers in connection with the business of the partnership, and the goodwill of said business and the right to use the name of the partnership, or a similar name, as a corporation or partnership by the buyer or his assigns for the purpose of carrying on the business of manufacturing and selling electric arc lamps to be used for motion picture purposes and/or motion-picture appliances of any nature. The purchase price for said property, business, and assets shall be the sum of $150,000.

3. The sellers shall grant permission to a reputable accountant or firm of certified public accountants selected by the buyer to make an examination of the properties, books of account, records, and papers of the partnership for the purpose of verifying the representations made herein and for the purpose of determining the amount of the net earnings for the 4-year period ended December 31, 1928. Said accountants shall be allowed ninety days from the date hereof within which to complete their examination of the properties, books of account, records, and papers of the partnership.

4. In the event the buyer exercises this option, the purchase price shall be paid as follows: $25,000 cash upon delivery to the buyer of executed bills of sale and/or other documents, including such other documents showing compliance with the bulk sales law of California, as are satisfactory to counsel for the buyer. The balance of $125,000 shall be payable in five equal installments of $25,000 each, the first installment to be paid six months from the date of the first payment of $25,000 and each of the remaining installments shall be payable at intervals of six calendar months from the date of the preceding installment. Each installment shall bear interest at the rate of 6 percent per annum.

5. It is further agreed, in the event this option is exercised, that the sellers shall cause to be executed a lease on those portions of the building now occupied by them for a period of 5 years at a rental of $200 per month.

6. It is further agreed, in the event said option shall be exercised, that Clarence S. Ashcraft shall, at his option, enter the employment of the buyer, or the partnership or corporation which shall acquire the business of the partnership as superintendent of the shop at a salary of $500 per month; said employment shall, at the option of the said Clarence S. Ashcraft, continue for a period not to exceed 5 years; and said Clarence S. Ashcraft shall agree during the said period, and for a period of 5 years after the period of said employment, not to engage or become interested directly or indirectly in any electric arc-lamp business for motion-picture studio and/or theater purposes or electric arc-lamp parts business for said studio and/or theater picture purposes and/or motion-picture appliances of any nature, other than with the buyer or his assigns, in Los Angeles County, California, or in any State of the United States except the State of Montana.

7. This contract shall inure to the benefit of the personal representatives executors, administrators, and assigns of the parties hereto.

(Signed) MARY G. ASHCRAFT.
CLARENCE S. ASHCRAFT.
H. E. VAN DUYNE.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 6th day of May, A.D. 1929, before me, L. R. Vermille, a notary public in and for said county and State, personally appeared Mary G. Ashcraft, Clarence S. Ashcraft, and H. E. Van Duyne, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] L. R. VERMILLE,
Notary public in and for said county and State.

COMMITTEE EXHIBIT No. 141, NOVEMBER 17, 1933

CHICAGO, ILL., *July 14, 1929.*

Mr. HARRY H. STRONG,
Toledo, Ohio.

DEAR SIR: This will confirm the arrangement between you and the undersigned as follows:

On April 29, 1921, an agreement was entered into between the Strong Electric Co., an Ohio corporation, and Harry H. Strong, of Toledo, Ohio therein called the sellers, and J. E. McAuley, of Chicago, Ill., therein called the buyer, in and by which said agreement there was to be sold to the buyer the property, business, and assets of the Strong Electric Co.

The undersigned is the assignee of J. E McAuley and of all right, title and interest in and to said agreement.

It has been agreed between you and the undersigned that said agreement of April 29, 1929, shall be cancelled and that in consideration thereof you shall sell, or cause to be sold, to the undersigned and/or his nominee, the entire issued and outstanding capital stock of the Strong Electric Co., an Ohio corporation, at and for the price of $416,000; it being further agreed that all representations and warranties contained in said agreement of April 29, 1929 are made herein as effectually as if incorporated herein in full.

It is further understood and agreed that you shall on or before December 1, 1929, deposit with Continental Illinois Bank & Trust Co., of Chicago, Ill. $75,000 par value of United States Liberty bonds to be held in escrow by said bank for the term of 6 years to indemnify the undersigned and/or a corporation to be organized by him to acquire the property, business, and assets of the Strong Electric Co., an Ohio corporation, against any and all liabilities of said the Strong Electric Co. that might accrue to said new corporation and/or the undersigned.

If the foregoing is acceptable to you, please indicate your acceptance in the space provided below, which shall constitute a contract between us.

Yours very truly,

H. CLARKE.

Accepted:

HARRY H. STRONG.

COMMITTEE EXHIBIT No. 142

This agreement made this 12th day of April 1929, by and between Theodore Hall and Joseph Connolly, of New York, N.Y., hereinafter called the sellers, and J. E. McAuley, of Chicago, Ill., hereinafter called the buyer.

Witnesseth: 1. The sellers hereby make the following representations and warranties, which representations and warranties it is agreed shall survive the consummation of the purchase herein contemplated to be made:

(a) That they own or control 305 shares, being the entire issued and outstanding capital stock of Hall & Connolly, Inc., a corporation of the State of New York, hereinafter sometimes referred to as the corporation; that said capital stock is full paid and nonassessable.

(b) That the financial condition of the corporation is now and at the date of the consummation of the purchase herein contemplated to be made will be at least as good as is reflected by the balance sheet of the corporation as of December 31, 1928, a copy of which is annexed hereto, made a part hereof and marked "Exhibit A."

(c) That the net earnings of the corporation after depreciation, obsolescence but before the payment of Federal income taxes and before the payment of salaries to Theodore Hall and Joseph Connolly, for the 12 months ended December 31, 1928, were not less than $30,000.

(d) That the cash, accounts receivable, and physical assets of the corporation including therein furniture, fixtures, jigs, dies, tools, patterns, machinery, and merchandise on hand at the date of the inspection thereof, as hereinafter provided, and at the date of the consummation of the purchase of the capital stock of the corporation, as hereinafter provided, will be not less than $60,000.

(e) That the corporation or the sellers now own or will acquire and will assign to the buyer an exclusive assignable license, for the full life of the patents hereinafter referred to, from Elmer A. Sperry and/or the Sperry Gyroscope Co., Inc. (formerly known as the Sperry Gyroscope Co.), to manufacture and sell electric arc lamps under the following letters patent granted to E. A. Sperry and/or Sperry Gyroscope Co., Inc.; Nos. 1,227,210, 1,328,311, 1,428,510, 1,357,827.

2. The sellers agree to sell or cause to be sold, and the buyer, subject to his verification of the foregoing representations, as hereinafter provided, agrees to buy, all the issued and outstanding capital stock of the corporation, at and for the price of $160,000.

3. The buyer shall forthwith deposit with the Chase National Bank the sum of $12,000, which said sum shall be held in escrow by said bank, as hereinafter provided.

(a) The sellers shall cause permission to be granted to a reputable person or firm of certified public accountants selected and paid by the buyer and satisfactory to the sellers to make an examination of the properties, books of account, records and papers of the corporation for the purpose of verifying the representations made herein. Said accountants shall be allowed from date 90 days within which to complete their examination of the properties, books of account, records and papers of the corporation. Said accountants shall also be granted permission to make an examination of the books of account of said corporation for the 4 years ended December 31, 1928. The sellers shall also cause permission to be granted to counsel for the buyer to make an examination of the corporate records and stock books of said corporation to determine the authorized and outstanding capital stock of the corporation and whether the same is full paid and nonassessable.

(b) In the event said accountants shall have verified the representations and each of them herein made by the sellers, then the buyer shall complete said purchase and shall pay to the sellers the additional sum of $128,000 on or before the expiration of said 90-day period, and said sum of $12,000 hereinbefore provided for, shall be paid by said depository to the sellers, both of such payments to be made against the delivery to the buyer, of all the issued and outstanding capital stock of the corporation duly indorsed in blank, together with the resignations of the officers and directors of the corporation, provided, however, that the buyer may elect not to consummate said purchase, in which event it is agreed that the sum of $12,000 shall be paid by said depository to the sellers as agreed and as liquidated damages, said $12,000 to be accepted by the sellers as full satisfaction for all claims hereunder.

(c) In the event said accountants are unable to verify the representations and each of them of the sellers herein made, the said sum of $12,000 shall

be returned by said depository to the buyer and the buyer shall be under no further obligation under this agreement.

4. In the event that said purchase shall be consummated, it is agreed between the parties hereto that the sum of $20,000, being the balance of the purchase price, shall be deposited at the same time with the depository aforesaid by the buyer, which said sum shall be held in escrow to indemnify the buyer against any loss or liability on account of accounts receivable, bad debts, and for liabilities not disclosed by the books of the corporation. Said amount of $20,000 shall be paid to the sellers at the expiration of 9 months from the date of consummation of said purchase less the amount of any uncollected accounts and accounts receivable and less any amounts paid for any liabilities or obligations not disclosed by the books of the corporation at the date of the consummation of the purchase and which the corporation shall have paid subsequent to the consummation of the purchase. Such sums or amounts so withheld or deducted shall be paid by the said depository to the buyer and any such uncollected accounts receivable shall be assigned by the buyer to the sellers.

5. The sellers agree that the business of the corporation shall continue to be conducted in the ordinary course and that no unusual or extraordinary expenses shall be incurred and that no dividend has been or will be declared between the date hereof and the date of the consummation of the purchase herein contemplated to be made, it being understood that the net earnings of the corporation from and after the date hereof shall accrue to the benefit of the buyer.

6. In the event that said purchase is consummated, the sellers agree that they will promptly discharge and satisfy the accounts payable and all liabilities of the corporation whatsoever.

7. It is further agreed that the sellers, and each of them, shall, in the event of the consummation of said purchase, then contemporaneously at the request of the buyer, cause to be executed a contract or contracts with the buyer and/or the corporation by which the sellers and each of them shall obligate themselves, respectively, for a period of 7 years after the consummation of such purchase, not to engage or be or become interested, directly or indirectly, as individuals, partners, stockholders, directors, officers, employees, or lenders of money, in or to any electric arc lamp business or electric arc lamp parts business other than with the buyer or the corporation to be organized by him within any State of the United States, except the State of Montana.

8. This contract shall inure to the benefit of the personal representatives, executors, administrators, and assigns of the parties hereto.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

In the presence:

THEODORE HALL.
JOSEPH J. CONNOLLY.
J. E. MCAULEY.

Balance sheet of Hall & Connolly, Inc., per books Dec. 31, 1933

Assets:	
Cash in banks	$7,281.75
Petty cash	11.53
Accounts receivable	34,894.90
Notes receivable	1,500.00
Inventory	19,998.08
Machinery and equipment	9,953.70
Furniture and fixtures	2,672.73
Tools and dies	3,356.33
	15,982.76
Reserve for depreciation	3,716.45
Deposits	705.00
Rent prepaid	500.00
Total assets	77,157.57

Balance sheet of Hall & Connolly, Inc., per books Dec. 31, 1933—Continued

Liabilities:		
Accounts payable		$9,447.50
Bills payable		4,000.00
Royalties payable		45.00
Commissions payable		108.60
Due to J. J. Connolly		4,970.00
Due to Theodore Hall		5,420.00
Total liabilities		23,991.10
Capital:		
Capital stock		33,000.00
Surplus Jan. 1, 1928	$4,630.88	
Net profit year ending Dec. 31, 1928	15,535.59	
Surplus Dec. 31, 1928		20,166.47
Capital and surplus		53,166.47
		77,157.57

We hereby certify that the above financial statement represents, in our opinion, the true financial condition of Hall & Connolly, Inc., as of December 31, 1928.

The inventory was accepted as submitted to us and appears to be reasonably stated. Accounts receivable past due items included herein amount to approximately $3,500.

L. B. Prosnitz & Co.,
Per Ludwig B. Prosnitz, *C.P.A.*

April 13, 1929.

The Chase National Bank of the City of New York,
18 Pine Street, New York City.

Gentlemen: The undersigned, J. E. McAuley, herewith deposits with you the sum of $12,000 to be held by you in escrow according to the following terms and conditions:

1. The said sum is to be released by you at any time upon the joint request of the undersigned and Messrs. Theodore Hall and Joseph Connolly, the said sum to be paid to such person or persons as the said joint request shall designate.

2. In the event that you do not receive from the undersigned and Messrs. Hall and Connolly a joint request for the disposition of said sum on or before the expiration of 90 days from the date hereof, you are to pay the said sum forthwith to Messrs. Hall and Connolly; provided, however, that if the undersigned so notify you within the said 90 days' period not to pay the said sum to the said Messrs. Hall and Connolly, you shall continue to hold the same until released by the joint request of the undersigned and the said Messrs. Hall and Connolly regardless of the lapse of any time or until you are directed to pay it over by order of a court of competent jurisdiction.

It is understood and agreed that you shall assume no responsibility in connection with the deposit of the said sum other than the safekeeping thereof, and it is further understood that your expenses, if any, in connection with the said deposit will be reimbursed and you shall have prior charge on said fund for such reimbursement. The bank's compensation for its services shall be the interest earned on the sum deposited herewith.

———, ———

The signatures of Messrs. Hall and Connolly are as follows:

———, ———

———, ———

The undersigned acknowledges receipt of check of J. E. McAuley on the Mid City Trust & Savings Bank, of Chicago, Ill., in the amount of $12,000, the proceeds of which upon collection are to be held by it pursuant to the terms hereinbefore set forth.

In triplicate. The Chase National Bank of the City of New York,
By J. R. Kane, *Second Vice President.*

The J. E. McAuley Manufacturing Co.,
Chicago, Ill.

Gentlemen: Beg to confirm our offer made to you through your Mr. J. E. McAuley, good for 30 days, which is as follows:

If you will agree within the above period to enter into a contract for the purchase of our company for $160,000, payable within 45 days from the signing of the contract, we will agree that our gross for the year 1928 was no less than $170,000 and our net no less than $20,000, and the fiscal inventory $60,000. You agree, on signing the contract, to deposit $12,000 with Manufacturers Trust Co., Canal Street branch, New York City, as liquidated damages in case you do not carry out the contract.

The representations as to our gross and net are subject to audit and verification by your auditors. The money to be deposited on the signing of the contract to be returned to you in case it is found that the gross and net are less than represented.

Very truly yours,

Hall & Connolly, Inc.,
Joseph J. Connolly,
Treasurer.

Accepted:

——— ———.

Committee Exhibit No. 143, November 17, 1933

This agreement made this 6th day of June, 1929, by and between H. F. Boeger and George A. Mitchell, both of Los Angeles, Calif., hereinafter called the "sellers", and H. L. Clarke, of Chicago, Ill., hereinafter called the "buyer".

Witnesseth

1. The sellers agree to sell or cause to be sold and the buyer agrees to purchase or cause to be purchased, as hereinafter provided, all of the property, business and assets of every kind and nature of the Mitchell Camera Co., a California corporation, here nafter sometimes referred to as the corporation, including in such property, business and assets, furniture, fixtures, jigs, dies, tools, patterns, machinery, merchandise on hand, claims, insurance, securities, choses in action, contracts, agreements, leases, leasehold interests, licenses, trade marks, trade names, trade rights, brands, patents, applications for patents, patent rights, also all cash and accounts receivable received by or becoming due to the corporation after June 30, 1929, and the good will of the business of the corporation or a similar name by or in connection with a corporation to be organized by the buyer to carry on a business similar to that carried on by the corporation. The sellers also agree to cause to be conveyed to the buyer free and clear of all liens, claims and encumbrances the real estate and improvements being constructed thereon, situated in West Hollywood, county of Los Angeles, State of California, more particularly hereinafter described, being the proposed new manufacturing plant, offices and administration building of the corporation, said improvements to be fully completed in accordance with the existing plans and specifications relating thereto, with equipment and machinery to be installed therein.

The description of said real estate is as follows:

Lots 36 and 38, Winetka tract, and lots 7 and 8 of tract no. 3585 of the county of Los Angeles, State of California.

2. The sellers hereby represent and warrant that the corporation now owns or will acquire all letters patent under which it manufactures its products, said patents to be included in the assets to be sold to the buyer.

3. The purchase price of said property, business, and assets shall be the sum of $1,475,000, payable as herein provided.

4. The buyer shall forthwith deposit with Continental Illinois Bank & Trust Co., Chicago, Ill., the sum of $100,000, which said sum shall be held in escrow by said bank and applied on the purchase price as herein provided.

(a) The buyer shall forthwith proceed to cause to be organized a corporation to acquire the assets, business, and property of the corporation (hereinabove described) for convenience hereinafter called the "New Corporation."

The details of the organization of the corporation and the charter provisions shall be subject to the approval of counsel of the sellers and the buyer, said organization to be completed on or before July 1, 1929. The corporation shall have an authorized issue of preferred stock in the amount of $1,000,000, consisting of 10,000 shares of the par value of $100 per share, said preferred stock to be cumulative as to dividends in the amount of 7 percent per annum. Said preferred stock shall be fully paid and nonassessable. The charter of the new corporation shall contain certain restrictions on corporate action as set forth in Schedule A, annexed hereto and made a part hereof.

(*b*) On or before September 1, 1929, the buyer shall cause to be deposited with said Continental Illinois Bank & Trust Co. an additional sum of $375,000, and 10,000 shares of the preferred stock of the new corporation, together with an agreement by the new corporation and H. L. Clarke jointly and severally to purchase from the seller said 10,000 shares of preferred stock of said new corporation at the par value thereof, $100 per share, plus accrued dividends thereon at the rate of 7 percent per annum, to be taken up and paid for as follows: One thousand shares to be so purchased on or before October 1, 1929; and 1,000 shares on the first day of each succeeding month thereafter until the 10,000 shares shall have been purchased and paid for, provided, however, that the buyer may at his option purchase at any time all of said preferred stock by paying the par value thereof plus accrued dividends thereon to the date of purchase.

(*c*) Said $475,000 so deposited with said bank, together with the 10,000 shares of the preferred stock of the new corporation and the agreement to purchase the same as above provided, shall be delivered by said bank to the sellers or their nominee against the delivery to said bank for the account of the buyer or his nominee of all properly executed bills of sale and/or instruments of title necessary to vest in the buyer or his nominee all right, title and interest in and to the property, business, and assets of the corporation.

(*d*) Interest on said $475,000 shall be paid at the rate of 7 percent per annum from July 1, 1929, and dividends on said preferred stock shall be cumulative from July 1, 1929.

In the event that the buyer does not perform the terms and conditions hereof as above set forth, then the said sum $100,000 first to be deposited with Continental Illinois Bank & Trust Co. shall be paid by said bank to the sellers and same shall be retained by the sellers as consideration given to the buyer by the sellers dated April 12, 1929, and as liquidated damages.

5. The sellers agree that the business of the corporation shall continue to be conducted in the ordinary course and that no unusual or extraordinary expenditure shall be made and that no dividend will be declared or paid after June 30, 1929, it being the agreement of the parties hereto that all of the net earnings of the corporation accruing from and after July 1, 1929, shall accrue to and belong to the buyer.

6. It is further agreed that the sellers shall, contemporaneously with the consummation of the purchase hereunder, cause to be executed a contract or contracts with the new corporation by which the sellers shall obligate themselves for a period of 5 years after the consummation of such purchase not to engage or to become interested, directly or indirectly, as an individual, partner, or stockholder, director or officer or employee in or to any motion-picture camera business, other than with the buyer or the new corporation.

7. The sellers and each of them further agree that at the request of the buyer they shall become employed by the new corporation in the same capacities as they now serve with the corporation for a period of at least 1 year and at a salary for each of them of $25,000 per annum, payable monthly, beginning July 1, 1929.

8. The buyer and/or his assignee shall cooperate with the sellers in the collection of any and all accounts receivable of the old corporation due and owing to the corporation prior to July 1, 1929, and shall permit the collection for the account of the sellers by the new corporation at the office of the new corporation of said accounts.

9. The buyer hereby guarantees and indemnifies the sellers, and each of them, from and against any and all stockholders' liability and/or any and all other liability and/or obligations of any kinds, natures or descriptions, attaching to, or which may at any time attach to, the 10,000 shares of preferred stock to be deposited with said bank for the sellers by the buyer.

10. This contract shall inure to the benefit of the heirs, personal representatives, executors, administration, and assigns of the parties hereto.

In witness whereof the parties hereto have executed this agreement as of the day and year first above written.

H. F. BOEGER,
GEORGE A. MITCHELL,
By H. F. BOEGER, *Attorney-in-fact.*
Sellers.
H. L. CLARKE, *Buyer.*

Witness:
O. E. KOEGEL.

SCHEDULE A

The charter of the new corporation shall contain among the provisions relating to the 7 percent cumulative preferred stock, of which there shall be authorized 10,000 shares of the par value of $100 per share, the following:

Unless with the affirmative vote or written consent of the holders of 100 percent of the shares of preferred stock at the time outstanding (in addition to any other vote or consent at the time required by law), the corporation shall not:

1. Authorize or issue any stock or class of stock having a priority or preference over the preferred stock as to earnings or assets; or
2. Increase the authorized amount of preferred stock; or
3. Amend the provisions of the charter so as to alter or change the preferences given to the preferred stock; or
4. Grant or assume any mortgage, lien, or other encumbrances upon any of its property or assets, real, personal, or mixed; this provision, however, is not to prohibit the giving of any purchase money mortgages or the purchasing of property already subject to mortgages; or
5. By sale, lease, merger, consolidation or otherwise, dispose of a substantial part of the business and assets of the corporation, including any manufacturing plant now or hereafter held by the corporation, or any substantial portion of such plant.

The charter of the new corporation shall also provide that the preferred stock shall have full voting power for the election of directors and other purposes, which voting power shall be cumulative.

CHICAGO, ILL., *June 6, 1929.*

Mr. H. L. CLARKE,
Chicago, Ill.

DEAR SIR: This will confirm the understanding between us as follows:

Of even date herewith there has been entered into between you and the undersigned an agreement relating to the sale of the property, business and assets of the Mitchell Camera Corporation, a California corporation.

It is understood and agreed that you shall have the right to have an accountant of your selection, and satisfactory to the undersigned, make an examination of the books of account and records of the Mitchell Camera Corporation, with a view of determining the assets and earnings of the corporation.

It is further understood and agreed that you shall have the right and option, on or before July 10, 1929, by notice in writing to the undersigned, to rescind the aforesaid agreement between us executed of even date and contemporaneously herewith. In the event you so elect to rescind, the $100,000 on deposit with the Continental Illinois Bank & Trust Co. shall be returned to you and both you and the undersigned shall be released of all liability under said agreement. In the event you do not give such notice on or before July 10, 1929, said agreement shall remain in full force and effect.

Very truly yours,

H. F. BOEGER,
GEORGE A. MITCHELL,
By H. F. BOEGER,
Attorney in Fact.

Witness:
O. E. KOEGEL.
Accepted:

H. L. CLARKE.

(The printed circular of General Theatres Equipment common stock voting trust certificates is inserted at this point in the record.)

General Theatres Equipment, Inc.

COMMON STOCK, VOTING TRUST CERTIFICATES (WHEN, AS, AND IF ISSUED)

Pynchon & Co., members of the New York Stock Exchange, 111 Broadway, New York. Uptown offices: Madison Avenue and Forty-third Street and Savoy-Plaza Hotel. 112 West Adams Street, Chicago, Ill. 408 Broadway, Milwaukee, Wis. 1 Drapers Gardens, London. Exchange buildings, Liverpool. 25 Cross Street, Manchester. While the information contained herein is not guaranteed, it has been obtained from official sources. July 13, 1929.

Capitalization

[Upon completion of the present financing, and upon consummation of the exchanges of securities offered to stockholders]

	Authorized	Outstanding
15-year 6 percent convertible gold debentures due 1944	$6,000,000	$6,000,000
Common stock, no par value	[1] 5,000,000	[1 2] 2,026,250

[1] Shares.
[2] Of this total 376,250 shares are reserved for exchange offers to stockholders.

EARNINGS

The following earnings of the companies and businesses to be acquired (as above set forth) are based upon actual operations for the 12-month period ended on May 31, 1929, and for the calendar years 1929 and 1930 on estimates as to contracts or commitments now at hand or presently to be acquired:

Year ended	May 31, 1929	Dec. 31, 1929	Dec. 31, 1930
Net income before Federal income taxes	$2,283,530	$4,465,000	$10,655,000
Maximum annual interest requirements on $6,000,000. 15-year 6 percent convertible gold debentures due 1944	360,000	360,000	360,000
Total	1,923,530	4,105,000	10,295,000
Equivalent per share on 2,026,250 shares common stock	0.94	2.02	5.08

MANAGEMENT AND GENERAL

The motion-picture industry today is the fifth largest industry in the United States, with a capital investment of approximately $1,750,000,000. There are about 20,000 motion-picture theaters in the United States, with a seating capacity of approximately 16,500,000, and a weekly attendance of over 100,000,000. It is conservatively estimated that the annual receipts of the motion-picture houses total more than $800,000,000.

It occupies an impregnable position among the industries of the United States. Its business is little affected by business depressions, due to the popular prices of its programs, and with the favorable public relations which it enjoys, the widespread appeal of the talking movie and the remarkable improvements in the methods of projection and presentation, it appears that the motion-picture industry now stands on the threshold of a new era of prosperity and expansion.

General Theatres Equipment, Inc., will constitute a complete unit for the manufacture, distribution, installation, and servicing of all types of equipment and supplies used in the operation of motion-picture and general theatres.

The management of the corporation will continue to be vested in the hands of those who have been responsible for the successful operation of the businesses being acquired. In order to insure a continuity of the present successful management, all of the common stock will be placed under a voting trust agreement, expiring July 1, 1939, under which Mr. H. L. Clarke, Mr. W. F. Ingold, and Mr. W. S. Hammons will act as voting trustees.

General Theatres Equipment, Inc., should be able to effect very substantial economies in operation due to its large purchasing power and the benefits of centralized operation and management of the businesses to be acquired.

The registrars for the common stock will be The Chase National Bank of the city of New York and the Continental-Illinois Bank & Trust Co. of Chicago; the transfer agents will be Commercial National Bank & Trust Co. of New York and the office of the corporation in Chicago.

Mr. H. L. Clarke, President of General Theatres Equipment, Inc., has furnished the following information regarding the company and its issue of common stock:

ORGANIZATION AND BUSINESS

General Theatres Equipment, Inc., a Delaware corporation, will own in excess of 60 percent of the outstanding common stocks of International Projector Corporation and National Theatre Supply Co. and all of the outstanding common stock of Theatre Equipment Acceptance Corporation. Upon acceptance of the exchange offers now being made, General Theatres Equipment, Inc. will own all of the outstanding common stocks of these companies. The proceeds of present financing will provide funds with which to acquire all of the outstanding funded debt and preferred stocks of these companies. The corporation will also acquire 50 percent of the outstanding capital stock of Grandeur, Inc., which will acquire through a wholly-owned subsidiary all of the business and assets of Mitchell Camera Co. General Theatres Equipment, Inc. will also acquire all of the outstanding capital stock of Hall & Connolly, Inc. and through wholly owned subsidiaries the properties, businesses and assets of The Strong Electric Company, J. E. McAuley Manufacturing Co., and Ashcraft Arc Lamp Co.

International Projector Corporation manufactures in excess of 75 percent of the motion picture projectors used throughout the world, many of its products also being used by churches, schools, and large industrial concerns. International Projector Corporation has been in the fore-front in adapting its projection apparatus to the sound motion picture, and controls important patents in sound projection equipment. During the past two years it has developed several new types of motion picture machines which are expected to revolutionize the industry. These machines have been perfected to a degree where the pictures are projected in such manner that an illusion of a third dimension is given. The corporation sells a large portion of its products to the Western Electric Co., Radio Corporation of America, Loew's, Inc., Fox Film Corporation, Paramount-Famous Players-Lasky Corporation, and to other large users.

National Theatre Supply Co. maintains a nation-wide distributing organization which sells all types of equipment used in theaters. It operates 30 stores and warehouses in principal cities of the United States, and services booth equipment in over 75 percent of all motion-picture theatres in the United States. The company has exclusive selling arrangements for products of International Projector Corporation, except those held by Grandeur, Inc.

Grandeur, Inc., was organized to distribute and service the new types of motion-picture projectors which have been developed by International Projector Corporation. The new equipment will be leased by Grandeur, Inc., on a rental basis for a period of 10 years after installation. Grandeur, Inc., has entered into a contract under which Fox Theatres Corporation, or any affiliated company agrees to lease all projecting equipment of the new type required by it, or any subsidiary or affiliated company, on this basis.

Mitchell Camera Co. manufactures professional cameras for both the silent and sound pictures, its products being used by the foremost producers of motion-picture films. The corporation has developed new types of equipment in connection with the production of sound pictures, placing it in a most favorable position in this growing branch of the industry.

Theatre Equipment Acceptance Corporation finances commercial paper taken for theater equipment and secured by contracts of conditional sale, chattel mortgages, etc.

J. E. McAuley Manufacturing Co., Hall & Connolly, Inc., the Strong Electric Co., and Ashcraft Arc Lamp Co. manufacture projection lamps used in theaters. Sound and talking pictures require larger and more powerful light sources resulting in a wide-spread demand for more of the efficient lamps of the types manufactured by these companies.

COMMITTEE EXHIBIT No. 152, NOVEMBER 21, 1933

(The two-page photostatic reproduction of market quotations of General Theaters Equipment stock will be found only in the chairman's copy.)

Date	General Theatres Equipment		Preferred
	Common (new)	Common (old)	
July 15, 1929		32 [1]	
Aug. 1, 1929		34 [2]	
Aug. 15, 1929		34 [2]	
Sept. 1, 1929		35¼	
Sept. 15, 1929		46⅞	
Oct. 1, 1929		61	
Oct. 15, 1929		58¾	
Nov. 1 (Oct. 31), 1929		32⅞	
Nov. 15, 1929		30	
Dec. 2, 1929		33	
Dec. 16, 1929		32	
Jan. 2, 1930		Listed, 26⅞	
Jan. 15, 1930		36⅞ [3]	
Feb. 1, 1930		Jan. 30, 40⅞	
Feb. 15, 1930		47⅛	
Mar. 1, 1930		45	
Mar. 15, 1930		42¼	
Apr. 1, 1930		44	
Apr. 15, 1930		48½	
May 1, 1930		48¾	
May 15, 1930		47½	
June 2, 1930		46½	
June 16, 1930		33½	
July 1, 1930		32½	
July 15, 1930		33½	
Aug. 1, 1930		33⅜	
Aug. 15, 1930		30⅜	
Sept. 2, 1930		36½	
Sept. 15, 1930		34⅝	
Oct. 1, 1930		30	Oct. 14, 35.[1]
Oct. 15, 1930	19 [1]	24¾	Oct. 16, 37¼.[2]
Oct. 16	18½ [2]		
Nov. 1, 1930	14¼ [2]	21	34⅝.[2]
Nov. 15, 1930	12¾	19⅞	35.
Dec. 1, 1930	11	18¼	33¼.
Dec. 10		16⅜ [3]	
Dec. 11	8½ [3]		
Dec. 15, 1930	7¾ [3]		27¾.
Jan. 2, 1931	6½		24.
Jan. 15, 1931	8½		25.
Feb. 2, 1931	12½		26¼.
Feb. 16, 1931	14⅞		30½.
Mar. 2, 1931	13		29.
Mar. 16, 1931	11⅞		24¾.
Apr. 1, 1931	12		28.
Apr. 15, 1931	9		20.
May 1, 1931	4⅝		8¼.
May 15, 1931	3⅝		6.
June 1, 1931	3¾		6.
June 15, 1931	5		11½.
July 1, 1931	4⅝		9.
July 9, 1931	4		7.

[1] New York Produce Exchange.
[2] New York Curb Exchange.
[3] New York Stock Exchange.

Date	Fox Film "A"	Loew's, Inc., commom	Date	Fox Film "A"	Loew's, Inc., common
July 15, 1929	[3] 92⅜	[3] 58½	Aug. 1, 1930	45½	70¾
Aug. 1, 1929	88¼	58⅞	Aug. 15, 1930	42⅞	65¾
Aug. 15, 1929	92	58½	Sept. 2, 1930	51¾	78¾
Sept. 1, 1929	97½	60¾	Sept. 15, 1930	50⅜	78¾
Sept. 15, 1929	94	59	Oct. 1, 1930	44⅜	72
Oct. 1, 1929	97⅞	63⅝	Oct. 15, 1930	39¼	58⅝
Oct. 15, 1929	99⅜	62¾	Nov. 1, 1930	36⅝	56½
Nov. 1 (Oct. 31), 1929	81	49¼	Nov. 15, 1930	32¼	57¼
Nov. 15, 1929	65	46⅛	Dec. 1, 1930	32	58
Dec. 2, 1929	54½	45⅞	Dec. 15, 1930	25⅝	44¾
Dec. 16, 1929	38¾	46¼	Jan. 2, 1931	27½	48⅛
Jan. 2, 1930	17¼	42⅞	Jan. 15, 1931	27¼	46⅝
Jan. 15, 1930	22⅜	50⅞	Feb. 2, 1931	32	51
Feb. 1, 1930	30¾	61⅜	Feb. 16, 1931	37½	62½
Feb. 15, 1930	28⅜	66¾	Mar. 2, 1931	34⅛	57½
Mar. 1, 1930	33⅞	69⅞	Mar. 16, 1931	33	57⅞
Mar. 15, 1930	34	74	Apr. 1, 1931	33½	54
Apr. 1, 1930	34¾	79	Apr. 15, 1931	23	50¾
Apr. 15, 1930	43½	85	May 1, 1931	19¼	43½
May 1, 1930	52¼	91½	May 15, 1931	16¾	43½
May 15, 1930	52	93	June 1, 1931	15	36½
June 2, 1930	53¼	89⅝	June 15, 1931	19⅞	41
June 16, 1930	42¾	64¾	July 1, 1931	20¼	46⅛
July 1, 1930	40½	65	July 9, 1931	17⅜	44½
July 15, 1930	44	70			

[3] New York Stock Exchange.

STOCK EXCHANGE PRACTICES

WEDNESDAY, NOVEMBER 22, 1933

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment on yesterday, in room no. 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Adams (proxy for Costigan), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Julian L. Hagen, and C. Horace Tuttle, of Rushmore, Bisbee & Stern, also William Dean Embree, of Milbank, Tweed, Hope & Webb, counsel representing The Chase National Bank and The Chase Corporation.

The CHAIRMAN. The subcommittee will come to order.

Senator TOWNSEND. Mr. Chairman, before you call your witness I desire to make a suggestion: We do not seem to be able to get started at 10 o'clock in the morning, and I make a motion that we meet hereafter at 10:30 o'clock instead of 10 o'clock a.m., so that we may start promptly at the time fixed.

The CHAIRMAN. Do you suggest that we meet at 10:30 a.m. and run until 1:30 p.m., and then take a recess until 2:30 and run until 4:30?

Senator COUZENS. I do not agree with that. I think we better be on time. And 1:30 p.m. is pretty late to run at the noon time.

Senator TOWNSEND. My suggestion is made for the reason that we do not seem to be able to reach here on time in order to start at 10 o'clock, the time fixed.

Senator COUZENS. I think if you will check the record you will find that I have been as much on time as has the Senator from Delaware.

Senator TOWNSEND. I am not at all criticizing the Senator from Michigan, but——

The CHAIRMAN (interposing). Senator Couzens, I might explain that Mr. Pecora is bothered by telephone calls, and all that sort of thing, and that he has found it almost impossible to be here promptly for the meetings at 10 o'clock a.m. It is simply a matter of fixing the time that will be most convenient, and I think the time suggested would work out all right.

Mr. Pecora. Why not make it from 10:30 a.m. to 1 p.m., and then recess until 2 o'clock p.m., and run until 4:30 p.m.? You will then add that half hour in the afternoon.

Senator Couzens. That will be satisfactory to me.

The Chairman. If that is satisfactory it will be the order. Hereafter the subcommittee will meet at 10:30 a.m. and recess at 1 p.m. until 2 p.m., and remain in session until 4:30 p.m. That will be the order hereafter.

I believe Mr. Dodge was on the stand.

Mr. Pecora. Yes; Mr. Dodge.

TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. Pecora. Mr. Dodge, at the conclusion of your testimony of yesterday's hearing we had reached the point where the General Theatres Equipment entered into a certain contract with William Fox under the terms of which General Theatres Equipment, Inc., acquired some shares of Fox Film Corporation and of Fox Theatres Corporation. Do you recall that?

Mr. Dodge. Yes, sir.

Mr. Pecora. And the purchase price paid under that contract was $15,000,000 and other considerations?

Mr. Dodge. Yes, sir.

Mr. Pecora. Among the other considerations were payments of various sums of money that aggregated eventually about $6,000,000, did they not?

Mr. Dodge. I have a bad cold, Mr. Pecora, and am sorry I cannot talk very plainly. I am trying to talk so you can hear me, and clear my throat now and then as you have no doubt heard.

Senator Couzens. You are doing very well.

Mr. Dodge. I thank you. Now, Mr. Pecora, the original contract at that time was for 15 million dollars, plus the taking over of certain claims which Mr. Fox had and which amounted to 3 million dollars.

Mr. Pecora. Well, now——

Mr. Dodge (continuing). I do not know what you refer to as the additional 3 million dollars.

Mr. Pecora. Well, I merely took that as an approximation of the aggregate of other items, like salary of $500,000 a year for five years, which was to be paid to Fox's estate in event that he died within the 5-year period. Do you recall that?

Mr. Dodge. Yes, sir.

Mr. Pecora. That involved a total amount of 2½ million dollars.

Mr. Dodge. Yes, sir.

Mr. Pecora. And then he was given the promise of a 10 percent participation in certain stock acquisitions, and then that was waived by him for a consideration that was paid to him in cash. Do you recall that?

Mr. Dodge. My recollection was, Mr. Pecora, that he agreed to take, and then later did not take, 10 percent.

Mr. Pecora. But in lieu of that 10 percent he received a cash consideration, didn't he?

Mr. DODGE. There was a settlement made between him and Mr. Clarke and General Theatres Equipment later. That was in August, wasn't it?

Mr. PECORA. Yes, in August of 1930.

Mr. DODGE. Yes, sir.

Mr. PECORA. And all under the agreement of April 1930?

Mr. DODGE. Yes, sir.

Mr. PECORA. From that point on I want you to tell the subcommittee certain details with regard to the financing of that transaction by General Theatres Equipment, Inc. Now, the $15,000,000 cash consideration, and that is the agreement of April 7, 1930, required General Theatres Equipment, Inc., to pay to William Fox, and it was so paid by General Theatres Equipment, Inc., through the means of a loan made to it by the Chase National Bank, isn't that a fact?

Mr. DODGE. That is correct.

Mr. PECORA. Do you recall what security was given for that loan?

Mr. DODGE. The 50,101 shares, isn't it? Or the fifty thousand and odd shares of Fox Film B stock, and——

Mr. PECORA (interposing). It was 50,101 shares of Fox Film class B stock, and——

Mr. DODGE (interposing). And was——

Mr. PECORA (continuing). And 100,000 Fox Theaters class B stock.

Mr. DODGE. Yes; and 50,101 of class B stock of Fox Film Corporation.

Mr. PECORA. In other words, they put up as collateral for that loan the two blocks of stock which they acquired from Fox Film Corporation and Fox Theatres Corporation.

Mr. DODGE. No; they acquired the stock from Mr. Fox himself.

Mr. PECORA. Yes, and——

Mr. DODGE (continuing). That was the stock that they put up.

Mr. PECORA. And the risks were taken by the bank in that financing.

Mr. DODGE. No, sir; the risks were taken by General Theatres Equipment, because the loan was given on a note of General Theatres Equipment, with these stocks as collateral.

Mr. PECORA. I mean the risk as to the cash that was furnished. The deal was financed entirely by the Chase National Bank for General Theatres Equipment.

Mr. DODGE. The Chase National Bank made the loan to General Theatres Equipment, Inc.; yes, sir.

Mr. PECORA. Now, as a matter of fact negotiations had been initiated several months before April of 1930 that led to that agreement with Fox, had they not?

Mr. DODGE. I think, as I testified on yesterday, Mr. Pecora, negotiations, or tentative negotiations, had been discussed in the early part of December 1929, but had ceased at that time. They were not renewed again until April.

Mr. PECORA. Now, I am going to ask you to produce a telegram that you sent to Mr. Harley Clarke under date of April 8, 1930.

Mr. DODGE. Do you ask me to produce it?

Mr. PECORA. Have you a copy of that telegram?

Mr. MUDGE. What is the number, please?

Mr. PECORA. The number is 65-12.

Mr. DODGE. I have that wire now, Mr. Pecora.

Mr. PECORA. I show you what purports to be a photostatic copy of that telegram. Will you please look at it and tell me if it is a true and correct copy.

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence, and ask that it may be made a part of the record.

The CHAIRMAN. Let it be received, and the committee reporter will make it a part of the record.

(A telegram dated Apr. 8, 1930, to Harley L. Clarke was marked "Committee Exhibit No. 157, November 22, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The paper which has been marked "Committee Exhibit No. 157" reads as follows:

[Private wire]

APRIL 8, 1930.

HARLEY L. CLARKE,
Chicago.

Referring to telephone conversation: I want you to know that when I first called H. S. on the phone yesterday my remark was: "I congratulate you, Harry. It looks as though the ball was in your possession on the 2-yard line on its first down."

At the opening of the conversation at my office I told him that both the General Theatres and ourselves recognized that the film financing was his, that the Chase asked for nothing in the matter whatever, nor had they in the past; that you had asked me to represent you as the General Theatres because we were the leading bankers in that company, and because I was thoroughly conversant with all your negotiations; and that I wanted it plainly understood that any suggestions that were made as to the financial plan were suggestions only, as the final plan would have to be presented by him, but that we believed the suggestion that I was making for the General Theatres was sound and constructive, and would make it possible to sell the securities immediately, and would result in an absolutely clean slate for both the Film and Theatres company, and more profits for the bankers.

After making this remark I proceeded to give him our suggestions. I am wiring you this as you told me over the phone that he seems to have the impression, after his talk with me, that the Chase was trying to run the whole show and shove him aside.

MURRAY DODGE.

Now, to whom do the initials "H. S.", in the opening sentence in this telegram, refer to?

Mr. DODGE. To Harry Stuart, of Halsey Stuart & Co.

Mr. PECORA. Halsey Stuart & Co. had been the principal bankers for the Fox interests prior to April of 1930?

Mr. DODGE. Yes, sir.

Mr. PECORA. And what arrangement was made in this financing, and the purchase by General Theatres Equipment from William Fox of those two blocks of stock, Fox Film and Fox Theatres Corporations, respectively, with Halsey Stuart & Co., in view of their prior arrangement for the financing of the Fox Film interests?

Mr. DODGE. At the time of the acquisition of the B stock, which was made on April 7, there was no plan of financing. That is, on that day.

Mr. PECORA. Yes.

Mr. DODGE. Naturally, immediately afterwards it was necessary to form some plan, to work out not only the $90,000,000 of obligations which both the Fox Film Co. and the Fox Theaters Co. had, but also the $15,000,000 which General Theaters Equipment had paid for these stocks, making a total of somewhere around $100,000,000 to $105,000,000. And the telegram referred to a conversation which occurred on the day after the contract was consummated. It was dated April 7, was it?

Mr. PECORA. Yes, sir.

Mr. DODGE. And the consummation of the purchase from Mr. Fox was on the 7th. The talk I had with Mr. Stuart was on the morning of the 8th. Mr. Stuart read in the newspapers of this purchase from Mr. Fox, which was done over Sunday. The 7th I believe was on Monday. And he naturally wanted to know what the plans were and where his firm was going to fit into the picture. I told him that as far as Chase Securities was concerned, and I was sure I spoke for my associates, the other bankers in the General Theatres Equipment financing, that we had no intention to do anything but recognize the preferential rights which his firm had with the Fox Film Co.; and that therefore any financing which was done directly for the Fox Film Co. would be done by Halsey, Stuart & Co., and that we neither had had in the past nor would have in the future, anything to ask in that respect.

Mr. PECORA. Now, you had a conversation with Halsey, Stuart & Co. some time on April 8, 1930?

Mr. DODGE. In the morning; yes, sir.

Mr. PECORA. And was that the conversation to which you referred in this telegram to Harley Clarke that has just been offered in evidence?

Mr. DODGE. Yes, sir.

Mr. PECORA. Did you make a memorandum for future reference or for any other reason after your telephone conversation with Stuart?

Mr. DODGE. I do not think so.

Mr. PECORA. Or rather after your telephone conversation with Harley Clarke?

Mr. DODGE. I don't remember, but I think that is the only memorandum that I had.

Mr. PECORA. Will you refer to a document from the files of the Chase Corporation, known as no. 65-8A. Have you got a memorandum bearing that identifying number?

Mr. DODGE. Is it 65-8A?

Mr. PECORA. Yes.

Mr. DODGE. Yes, sir.

Mr. PECORA. Is that a memorandum made by you of the conversation you had with Harley Clarke on the 8th of April 1930?

Mr. DODGE. No, sir; it was not made by me. That was a telephone conversation which Mr. Clarke had, or that somebody in his office in New York had. I think it was Mr. Koegel, and was sent to me for my information.

Mr. PECORA. By Mr. Clarke?

Mr. DODGE. As I remember this, it was sent by Mr. Koegel from Mr. Clarke's office in New York. Mr. Clarke was in Chicago.

Mr. PECORA. Mr. Koegel was representing Clarke at that time?

Mr. DODGE. Yes, sir; and Mr. Clarke was in Chicago.

Mr. PECORA. I show you what purports to be a photostatic reproduction of that memorandum. Will you look at it and see if you can identify it as a true and correct copy thereof?

Mr. DODGE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence, and ask that it may be made a part of the subcommittee's proceedings.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the record.

(A memorandum dated Apr. 8, 1930, headed "Excerpts from conversation with H. L. C.", was marked "Committee Exhibit No. 158, Nov. 22, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum which has been marked "Committee Exhibit No. 158", of this date, reads as follows:

EXCERPTS FROM CONVERSATION OF H.C.L.—4/8/30

CLARKE. Stuart was in our office with Koegel, and he finally said that he felt very bad, that he had been very badly treated, generally speaking. He said, "Well, I went over to see Murray Dodge, and he tried to tell me what the amount of debentures should be and the price and the conversion." I said, "Did he ask you for any of the debentures? If he didn't ask you for any of the debentures, he might have been giving you good advice * * * naturally, because it might affect our financing, and if he made a suggestion, it might have been a good one. Murray didn't want to inject himself into the proposition." I said, "Harry, what have you got on your mind?" He said, "Well, I won't tell to anyone until you come out." I said, "Well, I am not going to leave here until tomorrow, so it is necessary that this thing go ahead. As a matter of strategy, this matter ought to be handled his way, and I want to get your consent to do it, if not now, later in the day. I want you to agree that I do not have any preferential agreement with you or any of the other bankers. They will try to drive me into one with you, and I won't be driven." Stuart said, "Well, that might be the way to do it."

(Stuart said he was going to call me at 2 o'clock, but called back about 5 minutes later.)

Stuart said, "We can't settle this thing until you get here. You are tired and want to get away."

(I told him I was going to Lake Geneva, but have since changed my mind.)

I said, "You have something on your mind. For God's sake spill it. Now look here, you and I went into this thing to see it through. If it had not been for the Chase I could not have gotten the money. There is no one person responsible, but they all are ready to claim credit. Even I may claim credit for it 6 months from now." Stuart said, "I think you have done as much as anybody."

CLARKE. Maybe I have, but whatever I have contributed——

STUART. Well, you're getting all the credit for it in the newspapers.

CLARKE. Well, what's wrong?

STUART. I have been put out on the end of a springboard and told to jump off.

CLARKE. What do you mean?

STUART. Well, for one thing, Blumenthal and Greenfield, knew what was going on, and I didn't.

CLARKE. Well, if they got any information, they didn't get it from me. If you want to play ball with me, you tell me what you have on me, and if you have anything on me, I will come clean with you. I have a reputation as well as you have.

STUART. I don't think you ought to talk to me like that. I feel as though I have been pushed out of the picture. Here's one thing that disturbed me very much. Mr. Niver is a director of the General Theatres, and was not invited to the meeting yesterday.

(Koegel said none of the bankers were at the meeting. He said he was so busy watching those fellows that he didn't have time to pay any attention to it.)

CLARKE. Then I took another tack. I said, "Well, Harry, my heart is too full. I ought to be very happy today. Then I called you up, and all I got from you was gloom. Find out what you have on your mind. Find out what you want me to do, and call me up. You have said nothing but a lot of trash to me, and I am more or less sick about it.

(Then I had a talk with John Otterson, and told John what I have just told you. I told him that he could repeat it to Stuart if necessary.)

I said, I have nothing to do with the publicity. Sam Untermeyer is raising hell right now because we are permitting publicity favorable to Halsey Stuart. (The thing that raised particular hell was a headline in the Chicago Tribune, something to the effect that he had whipped the bankers into line.)

If you talk to him, you might say that when I talked to you I was in just a blue funk. * * * After everything I had done, it looked as though nothing had been appreciated.

Now, Mr. Dodge, can you elaborate on this memorandum of the conversation that Clarke had on that day with Halsey, Stuart & Co.?

Mr. DODGE. I cannot elaborate on the conversation which Mr. Clarke had with Mr. Stuart. And I do not think it needs any elaboration.

Mr. PECORA. After the termination of this agreement, and this negotiation, steps were taken in behalf of General Theatres Equipment to do some future financing of the Fox interests as required by this transaction, by General Theatres Equipment, were there not?

Mr. DODGE. Yes.

Mr. PECORA. And those steps included a proposal for the issuance of $55,000,000 par amount of 1-year 6 percent gold bonds?

Mr. DODGE. That is what the financing eventually amounted to.

Mr. PECORA. Yes.

Mr. DODGE. But between April 7 or April 8, in these discussions that I had with Mr. Stuart, and the actual closing of the contract, which involved all the financing, 10 days later, on the 17th, there were a great many discussions as to exactly what that financing would be.

Mr. PECORA. Who took part in those discussions with you, Mr. Dodge?

Mr. DODGE. The discussions were almost entirely had between Mr. Clarke and Mr. Stuart. Chase Securities Corporation, as I stated in that memorandum which was put in evidence, that telegram to Mr. Clarke, were entirely on the side lines in regard to that.

Mr. PECORA. Well, there had been some feeling, apparently, on the part of Halsey, Stuart & Co. that they were being crowded out of the picture with respect to future financing. Isn't that so?

Mr. DODGE. I don't think that that was what he felt. During the——

Mr. PECORA (interposing). Isn't that the implication that flows from the conversation reported to you by Clarke, that he had with Stuart, the head of Halsey, Stuart & Co.?

Mr. DODGE. I think in order to get the atmosphere of that situation I might explain——

Mr. PECORA (interposing). Well, that was why I asked you before if you could elaborate on those excerpts that I read from those conversations. Now will you explain it?

Mr. DODGE. I will elaborate on some of the background, of the reason for that conversation.

Mr. PECORA. All right.

Mr. DODGE. During the preceding 2 months or 3 months there had been two plans put forward for financing the Fox situation. One was by Bancamerica-Blair Corporation, Dillon, Read Co., and the Lehman Brothers group, and the other was by Halsey, Stuart & Co. acting for the two trustees, Harry Stuart and Otterson. There had also been a good many lawsuits in regard to those two plans.

That had not made for good feeling between the groups of bankers, and Chase Securities Corporation and Mr. Clarke—and I will say that I personally was very anxious, as it involved a considerable amount of financing for General Theatres Equipment, that any trouble between these two sets of bankers should be settled amicably, and that in any financing which the Fox Film Corporation had with the two groups of bankers, that they should join together in it; so that the public would feel, and I felt that they should rightly feel, that all those 2 weeks of newspaper publicity and fights that had been going on, had been settled, as I thought it would affect the credit of the Fox Film Co. advantageously to have it done in that way. And that was one of the subjects of my conversation with Mr. Stuart on that Tuesday morning. Mr. Stuart, I suppose, was not yet ready to admit that he was ready to have the two banking firms join in. In other words, if he did that it would mean that Halsey, Stuart & Co., instead of having 100 percent of the financing to dispose of, would have less than that amount.

Mr. PECORA. And Chase would have the balance?

Mr. DODGE. No, sir.

Mr. PECORA. Who would?

Mr. DODGE. Chase would have no interest in the Fox Film financing.

Mr. PECORA. Who was the other group?

Mr. DODGE. Bancamerica-Blair Corporation, Dillon, Read & Co., and Lehman Bros.

Mr. PECORA. What position were the Chase interests taking in that controversy between those two groups of bankers?

Mr. DODGE. Exactly what I said in that telegram—were neither in the past nor at that time asking for any financing in the Fox Film Co. It belonged, as we recognized, to Halsey, Stuart & Co. under the contract which Mr. Stuart's firm had with the Fox Film Co., to do the financing. It belonged to them. If later Halsey, Stuart & Co. wished to invite us into some financing, that was another matter.

Mr. PECORA. But eventually there was new financing done, which included the issuance of 55 million dollars par value of 1-year gold notes?

Mr. DODGE. Yes, sir.

Mr. PECORA. What banking interests took part in that?

Mr. DODGE. Halsey, Stuart & Co., Bancamerica-Blair Corporation, Lehman Bros., Chase Securities Corporation were offered 10 percent interest by Halsey, Stuart & Co. and accepted it, and Dillon, Read & Co.

Mr. PECORA. Now, as a result of the acquisition from William Fox of the 50,101 shares of Fox Theatres stock and 100,000 shares of Fox Film stock by General Theatres Equipment, Inc., wasn't the latter company put in control of those two corporations?

Mr. DODGE. Yes, sir.

Mr. PECORA. And that issuance of 55 million dollars of debentures was to be made by what corporation?

Mr. DODGE. The Fox Film Corporation.

Mr. PECORA. When was that decided upon?

Mr. DODGE. I think the actual form of the notes, that is, the one-year note, was decided on somewhere around the 15th or 16th.

Mr. PECORA. Of April?

Mr. DODGE. Of April; 2 days before the final contract.

Mr. PECORA. The Fox Theatres Co. at that time owned what amounted to a controlling interest of Loew's, Inc., did it not?

Mr. DODGE. It owned something around 42 percent.

Mr. PECORA. It owned 660,900 shares of the capital stock of Loew's, Inc.

Mr. DODGE. Yes, sir.

Mr. PECORA. And that was enough to give it control.

Mr. DODGE. I think it was about 42 percent.

Mr. PECORA. But that was control, was it not? By "control" I do not mean majority control, but at least management control.

Mr. DODGE. Under ordinary circumstances it would be.

Mr. PECORA. Was there any other undivided ownership of stock of Loew's, Inc., that exceeded 660,900 shares?

Mr. DODGE. No, sir.

Mr. PECORA. It was desired by the General Theatres Equipment interests to have control of Loew's, Inc., through that stock ownership, was it not?

Mr. DODGE. No, sir. They already had it through the control that they had purchased in the Fox Theatres.

Mr. PECORA. Exactly. But that was one of the things that induced them to make that contract with William Fox.

Mr. DODGE. It was a valuable asset of Fox; yes.

Mr. PECORA. In 1930 did Fox Film Corporation increase or issue any additional capital stock?

Mr. DODGE. In connection with this financing, do you mean?

Mr. PECORA. Yes.

Mr. DODGE. Yes, sir.

Mr. PECORA. To what extent?

Mr. DODGE. 1,600,000 shares.

Mr. PECORA. Of what class stock?

Mr. DODGE. Class A.

Mr. PECORA. To whom was that 1,600,000 shares issued?

Mr. DODGE. To the Fox Theatres.

Mr. PECORA. For what?

Mr. DODGE. In consideration of the purchase of the 660,900 shares of Loew's stock—part consideration of that.

Mr. PECORA. What was the balance of the consideration? It was a cancellation of indebtedness of over $19,000,000, was it not?

Mr. DODGE. That is right; and some cash, I understand.

Mr. PECORA. The Fox Film Corporation issued these 1,600,000 shares of stock to Fox Theatres in return for the 660,900 shares of Loew's, Inc., stock which Fox Theatres Corporation owned at that time.

Mr. DODGE. Yes, sir; in part.

Mr. PECORA. What did Fox Theatres Corporation do with those 1,600,000 shares which the Fox Film Corporation issued to it?

Mr. DODGE. Immediately sold them to the General Theatres Equipment.

Mr. PECORA. On what terms?

Mr. DODGE. The same terms on which they purchased them; $30 a share.

Mr. PECORA. What disposition was made of those 1,600,000 shares of Fox Film stock by the General Theatres Equipment after it acquired it for $48,000,000, that being at the rate of $30 a share?

Mr. DODGE. During the first part of the negotiations it was hoped that the General Theatres would be able to retain all of the 1,600,000 shares which had cost them $48,000,000. However, they had also invested in the Fox Film Co. B stock and in the Fox Theatres B stock, $15,000,000, so that the total amount of financing which General Theatres had to do was $63,000,000, and it was felt by the General Theatres bankers that that was too large a sum to finance for the General Theatres at that time. Therefore, it was necessary that some of the Fox Film A stock, of 1,600,000 shares, should be sold to others, in conjunction with the financing which the General Theatres was doing with its bankers. I can probably elaborate that a little.

Mr. PECORA. Perhaps I can shorten your examination along this line by asking you leading questions about it. Did not the General Theatres Equipment enter into an agreement with William Fox whereby it sold to William Fox 160,000 of those shares, or, in other words, 10 percent of the total amount of those shares of Fox Film?

Mr. DODGE. That was my understanding at the time, Mr. Pecora. It evidently was not Mr. Fox's later.

Mr. PECORA. That was the arrangement, as you understand it, that was made with William Fox.

Mr. DODGE. Yes, sir.

Mr. PECORA. He was to purchase, at the cost price to General Theatres, 160,000 shares of the stock of the Fox Film Corporation.

Mr. DODGE. Yes, sir.

Mr. PECORA. Did not General Theatres also enter into an arrangement with Halsey Stuart & Co. whereby the latter acquired 200,000 shares of that block of 1,600,000 shares of Fox Film Corporation, also at the cost price of $30 a share to the General Theatres Equipment?

Mr. DODGE. That is correct.

Mr. PECORA. Did not General Theatres Equipment also enter into an arrangement with a syndicate headed by Pynchon & Co. that enabled that syndicate to buy from General Theatres at the cost price to General Theatres of $30 a share, a block of 240,000 of those shares?

Mr. DODGE. That is correct, sir, and at the same time the General Theatres sold to that same group 350,000 shares of General Theatres common stock.

Mr. PECORA. At what price?

Mr. DODGE. $37.50.

Mr. PECORA. That left General Theatres Equipment Co. retaining 1,000,000 shares of the 1,600,000 shares of Fox Film Co. which

it had acquired by means of the financing that you have already described.

Mr. DODGE. That was the intention.

Mr. PECORA. That was the intention. How did General Theatres Equipment pay the $48,000,000 that it was necessary to pay to enable it to acquire these 1,600,000 shares of the Fox Film Co.?

Mr. DODGE. In the first instance the General Theatres issued $30,000,000 of 10-year 6-percent convertible debentures at 90, which brought them in $27,000,000.

Mr. PECORA. Yes.

Mr. DODGE. They also issued 617,000 shares of common stock on a basis to net the company $37.50 a share, which netted them $23,137,500.

Mr. PECORA. Yes.

Mr. DODGE. They also sold not less than 440,000 shares of the class A stock of the Fox Film Corporation at $30 a share, which brought them in $13,200,000.

Mr. PECORA. Yes.

Mr. DODGE. That is a total of $63,337,500, as against a total liability of $63,000,000. That liability, as I stated, was $48,000,000 for the purchase of 1,600,000 shares from the Fox Theatres at $30 a share, and the $15,000,000 paid for the B stock of the Fox Theatres and the Fox Film.

The CHAIRMAN. Were those sales you mentioned all for cash?

Mr. DODGE. Yes, sir.

The CHAIRMAN. The sales of stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. Prior to the issuance of this block of 1,600,000 shares of its stock by the Fox Film Corporation, how many shares of common stock were outstanding? There were about 820,000 were there not?

Mr. DODGE. No, sir. I think it was 900,000 and something. I am not sure. I will give you the exact amount. [After conferring with associates.] Nine hundred and twenty thousand and odd.

Mr. PECORA. That included the B stock. I am referring to the A stock only.

Mr. DODGE. No, sir. [After conferring with associates.] A little over 800,000. You are right.

Mr. PECORA. There were 820,660 shares of A stock actually issued and outstanding.

Mr. DODGE. Yes, sir.

Mr. PECORA. And 100,000 shares of the B stock.

Mr. DODGE. Yes, sir.

Mr. PECORA. The B stock was the only stock that had voting rights.

Mr. DODGE. Yes, sir—no, sir. That is not quite true, Mr. Pecora. I understand that the A stock had the right to elect the minority of the Board at that time.

Mr. PECORA. The B stock, then, had that limited voting right.

Mr. DODGE. Yes, sir.

Mr. PECORA. Prior to this transaction with William Fox in April 1930, the Fox Film Co. was authorized, by action of its stockholders, to increase the number of A shares to 4,900,000, was it not?

Mr. DODGE. In the fall of 1929.

Mr. PECORA. In September 1929.

Mr. DODGE. I think that is correct; yes, sir.

Mr. PECORA. And it was under that authorization that these 1,600,000 shares were issued.

Mr. DODGE. Yes, sir.

Mr. PECORA. When those 1,600,000 additional shares were issued, were the then existing stockholders given the right or opportunity to subscribe for this issue of 1,600,000 shares?

Mr DODGE. No, sir.

Mr. PECORA. Why not?

Mr. DODGE. They were issued for property.

Mr PECORA. And the property was what?

Mr. DODGE. The property was 660,900 shares——

Mr. PECORA. Of Loew's, Inc.

Mr. DODGE. Of Loew's, Inc.

Mr. PECORA. Those 1,600,000 shares were issued at a price of $30 a share?

Mr. DODGE. Yes, sir.

Mr. PECORA. What was the market quotation for Fox Film A stock at that time?

Mr. DODGE. At what time?

Mr. PECORA. At the time it was issued at $30 a share, in April 1930.

Mr. DODGE. On April 17, 1930, the day on which the commitment was taken to purchase. I think the price ranged from $40 to—on the 17th of April it was $40. I think it closed higher, when the news came out.

Mr. PECORA. Around that time it had actually reached around $50, had it not?

Mr. DODGE. No, sir; not at the time this contract was entered into.

Mr. PECORA. If the market quotation for the stock was around $40 a share, why was it issued at $30 a share by Fox Film?

Mr. DODGE. The risk of $48,000,000, 1,600,000 shares of stock, and, as a matter of fact, there had been no plan submitted up to that time, either by Halsey, Stuart & Co., or by Dillon-Read-Blair & Co. group, which anticipated that any Fox Film stock would be issued as high as $30 a share, but it was really a fair price for the Fox Film Co. to receive, on account of the large size of the commitment, the risk of the business, and the necessities of the Fox Co. itself at that moment.

Mr. PECORA. In other words, these 1,600,000 shares were issued at a price about 10 points below the market, which netted the company about $16,000,000 less than the market price.

Mr. DODGE. The market price for a few shares; not 1,600,000 shares. They could not have been sold.

Mr. PECORA. That is according to whether one wants to buy or sell. If one wants to buy that large a block, the price would go up in the market, would it not?

Mr. DODGE. If you bought it in the market at that time, 1,600,000 shares of stock, there was not that amount issued. There was only 800,000 shares issued.

Mr. PECORA. I know it; but after the issuance it was available, was it not, and one desiring to buy that large a block of stock, and

compelled to buy it in the market, would certainly have to pay more than the then prevailing market price of around $40 a share.

Mr. DODGE. Mr. Pecora, from my memory of conditions at the time, I would say that if 1,600,000 shares of Fox A stock had been issued to the public at that time, or to the stockholders, the weight of that stock on the market would have probably carried the price of the stock far below $30. As a matter of fact it had sold as low as 18 in February.

Mr. PECORA. When the General Theatres Equipment issued $30,000,000 of debentures in April 1930, those debentures were sold to a group of bankers, were they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. At 90?

Mr. DODGE. Yes, sir.

Mr. PECORA. Who composed that group?

Mr. DODGE. The same bankers for the General Theatres Equipment, who had purchased the $6,000,000 of debentures in 1929.

Mr. PECORA. That is to say, the Chase Securities Corporation, Pynchon & Co., West & Co., W. S. Hammons & Co., and Shermar?

Mr. DODGE. No, sir.

Mr. PECORA. Which was the fifth member?

Mr. DODGE. There was Chase Securities Corporation——

Mr. PECORA. I included that.

Mr. DODGE. Pynchon & Co., Halsey Stuart & Co., West & Co., and Hammons & Co.

Mr. PECORA. Did that syndicate pass on those debentures to the public?

Mr. DODGE. Yes, sir.

Mr. PECORA. Right after it acquired them?

Mr. DODGE. Yes, sir.

Mr. PECORA. At what price?

Mr. DODGE. Ninety-nine and a half.

Mr. PECORA. A spread of nine and one half points?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was there any other intermediate group organized between the original purchasing group and the distributing group which sold them to the public?

Mr. DODGE. I do not think so, Mr. Pecora. I think they were sold through a country-wide selling group, on a commission basis.

Mr. PECORA. What was the commission allowed to the members of the selling group?

Mr. DODGE. Three percent.

The CHAIRMAN. Mr. Dodge, do I understand that there were $30,000,000 of debentures issued by the Chase Securities Co.?

Mr. PECORA. No; by the General Theatres Equipment.

The CHAIRMAN. I mean by the General Theatres Equipment—$30,000,000 by the General Theatres Equipment, and then $55,000,000 debentures issued by the Fox Corporation?

Mr. DODGE. Yes, sir.

The CHAIRMAN. Were they outstanding and offered to the public at the same time?

Mr. DODGE. No, sir. The $55,000,000 had not been offered to the public at the time the General Theatres debentures were offered, but they had been purchased by Halsey, Stuart & Co. for cash.

The CHAIRMAN. $55,000,000?

Mr. DODGE. $55,000,000.

Mr. PECORA. They did not pay $55,000,000.

Mr. DODGE. They paid 97¾.

The CHAIRMAN. And then they sold them to the public?

Mr. DODGE. They sold them to the public some week or 10 days later.

The CHAIRMAN. About when did they pay for them?

Mr. DODGE. On April 18.

The CHAIRMAN. 1929 or 1930?

Mr. DODGE. 1930.

The CHAIRMAN. These $30,000,000 issued by the General Theatres Equipment Co. were issued when?

Mr. DODGE. They were purchased and paid for on the same day, but they were actually issued to the public prior to the $55,000,000. My memory is that the $30,000,000 of debentures were offered within 5 days, and that the Fox Film debentures were issued within either 10 days or 2 weeks—May 1. That would be 12 days.

Mr. PECORA. I show you a photostatic reproduction of what purports to be a circular or prospectus published by the Chase Securities Corporation to accompany the offer to the public of these $30,000,000 par value of 6 percent convertible debentures. Will you look at it and tell me if it is a true and correct copy of such prospectus or circular?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(The document referred to, prospectus, Chase Securities Corporation, in re $30,000,000 General Theatres Equipment debentures, was received in evidence, marked "Committee's Exhibit No. 159", Nov. 22, 1933, and the same is not printed here, at the request of Mr. Pecora.)

Mr. PECORA. These debentures had a convertible privilege, did they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. What was it, generally?

Mr. DODGE. Twenty-one shares for every $1,000 principal amount of debentures.

Mr. PECORA. Twenty-one shares of the common stock of General Theaters?

Mr. DODGE. Yes, sir.

Mr. PECORA. How long was that conversion privilege open; for how long a period?

Mr. DODGE. During the life of the debentures, I think.

Mr. PECORA. General Theatres Equipment borrowed $27,000,000 from the Chase National in anticipation of the issuance of these $30,000,000 of debentures, did it not?

Mr. DODGE. Yes, sir. That was done that way. That is correct.

Mr. PECORA. Do you know when that loan was made? It was made some time in April 1930, was it not?

Mr. DODGE. April 18.

Mr. PECORA. Out of this loan of $27,000,000 General Theatres obtained from the Chase National Bank in anticipation of this debenture issue, the General Theatres repaid to the Chase Bank the $15,000,000 loan which it had obtained only a few days before April 18 from the Chase, and which was the $15,000,000 that it needed to pay the consideration or purchase price to William Fox.

Mr. DODGE. There was a large amount of money, naturally, changed hands on April 18, involving $103,000,000. This particular loan of $27,000,000 was made in anticipation of the offering by the bankers of the $30,000,000 of debentures, and was based on a contract which the General Theatres had with the bankers to purchase. The securities, the $30,000,000 of debentures, were actually issued within 5 days, and I understand that they were paid for—I want to be sure what time they were paid for [after conferring with associates]—on May 1. So that on May 1 the bankers paid to General Theatres Equipment $27,000,000, and they, in turn, repaid this loan of $27,000,000.

Mr. PECORA. No: $15,000,000.

Mr. DODGE (after conferring with associates). I am informed—it may be a little complicated—it is hard to allocate the payment of that loan of $15,000,000 at that time. My impression had always been that the $27,000,000 loan was made for this special purpose, and was repaid. The other loans were repaid by the issuance of common stock of the General Theatres later. [After conferring with associates:] I correct myself. I understand that the actual facts were that the $15,000,000 loan was paid off on the 18th.

Mr. PECORA. Out of the proceeds of the $27,000,000 loan which General Theatres obtained from the Chase National Bank on April 18?

Mr. DODGE. And other proceeds.

Mr. MUDGE. And the proceeds of the stock that was sold at the same time.

Mr. PECORA. Chase Securities Corporation was represented on the board of directors of General Theatres Equipment at that time, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. You were one of the directors of General Theatres who was an officer of the Chase Securities Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. Can you tell us why General Theatres Equipment Corporation agreed to sell these bonds at 90 to a syndicate that included the Chase Securities Corporation and its banking allies if, as a matter of fact, that syndicate was able, within a very short period of time, to dispose of those bonds to the public at 99½?

Mr. DODGE. Less a commission of 3 percent.

Mr. PECORA. The commission was paid to the members of the selling group—the distributing group?

Mr. DODGE. Yes, sir.

Mr. PECORA. The public paid 99½?

Mr. DODGE. Yes, sir.

Mr. PECORA. And took the whole issue?

Mr. DODGE. Yes, sir.

Mr. PECORA. Within a short time after the issuance of these bonds by the General Theatres Equipment Corporation?

Mr. DODGE. Yes.

Mr. PECORA. Why did General Theatres Equipment turn over this issue at only 90 if, as a matter of fact, the market very promptly absorbed them at 99½? Why that large spread, in other words?

Mr. DODGE. This contract was entered into on the 17th of April, Mr. Pecora, and at that time also there were other contracts entered into with the bankers, involving an additional amount, that is, for common stock—as you will remember, as I testified, of the General Theatres Equipment at 37½, and of the Fox Film A stock at $30 a share. At that time the bankers did not know whether those bonds were going to be readily taken by the public.

Mr. PECORA. Were not those bonds sold within 5 days to the public at 99½?

Mr. DODGE. It was a successful issue.

Mr. PECORA. And they were sold within 5 days, were they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. To the public, at 99½?

Mr. DODGE. Yes, sir.

Mr. PECORA. You say that one of the reasons why the General Theatres sold the bonds to the bankers at 90 was because the bankers did not know the condition of the market at that time.

Mr. DODGE. I want to clear this up, Mr. Pecora. You asked me if I was a director of the company. I was. But my negotiations were with Mr. Clarke and the officers of the company. I was not negotiating as a director.

Mr. PECORA. How could you disassociate your relationship from the General Theatres Equipment as one of its directors, in any of those negotiations?

Mr. DODGE. I could.

Mr. PECORA. Then why didn't you?

Mr. DODGE. I did.

Mr. PECORA. You just told us to the contrary.

Mr. DODGE. No, sir; I said I did disassociate myself.

Mr. PECORA. How could you do that?

Mr. DODGE. I did not find it difficult.

Mr. PECORA. How could you respond to your trust responsibilities as a director of General Theatres Equipment in the negotiations which led to the sale of these bonds by General Theatres at 90 to a banking group or syndicate that included your other company, the Chase Securities Corporation?

Mr. DODGE. I did not vote on the contract. My negotiations were made in good faith together with the bankers, with the officers of the company.

Mr. PECORA. Oh, the bankers have no reason to complain of getting the bonds at 90, which they were able to sell within 5 days to the public at 99½.

Mr. DODGE. They would have complained very bitterly if they had not been able to sell them.

Mr. PECORA. Then no such complaint was ever forthcoming, because they sold them within 5 days?

Mr. DODGE. Correct.

Mr. PECORA. And you have no doubt that the bankers knew when they took over these bonds at 90 that the market was ready to absorb them at 99½, have you?

Mr. DODGE. Their judgment at the time was justified by future events; yes, sir.

Mr. PECORA. And the "future events" were events that occurred within 5 days?

Mr. DODGE. Yes; but they took a large risk.

The CHAIRMAN. What became of those bonds, Mr. Dodge?

Mr. DODGE. The bonds sold almost immediately at a premium, Senator, and for some time they sold there. The General Theatres is now in the hands of the receiver and those bonds are selling, I think, at 5 or 6 in the market, unfortunately.

The CHAIRMAN. They are not paid, any of those bonds?

Mr. DODGE. No, sir.

Mr. PECORA. Now, Mr. Dodge, this syndicate, this banking syndicate that took over this 30 million par amount of debentures for 27 million dollars, you say, sold them to the selling group which they helped to organize, did they not?

Mr DODGE. Oh, yes. That was their business, to organize such a selling group.

Mr. PECORA. And sold them to the selling group at 96½, and the selling group then, at a 3-point profit to itself, passed them on to the public at 99½?

Mr. DODGE. That is correct.

Mr. PECORA. That resulted in a 6½-point gross profit to the original purchase group, did it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And that amounted in dollars and cents to $1,950,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. Do you know who financed in behalf of the original purchase group this 27 million dollar transaction?

Mr. DODGE. The contract was entered into to purchase on the 17th or the 18th—no, the 17th—by the banking group with the General Theatres Equipment. The General Theatres Equipment had not the bonds to deliver at that time. They borrowed the money from the bank. But the contract to purchase and the obligation was always there. The actual securities were issued and the public paid for them on the 1st of May, and as a matter of fact—well, we made what we call a clearance loan, borrowed from the bank 27 millions of dollars—at least the syndicate did—and paid the General Theatres the 27 millions of dollars.

Mr. PECORA. That is what I am coming to now. When did the syndicate, this original purchase syndicate, pay the 27 million dollars for these debentures to the General Theatres?

Mr. DODGE. I understand on the 1st of May.

Mr. PECORA. On the 1st of May?

Mr. DODGE. Yes.

Mr. PECORA. When were they sold to the public at 99½?

Mr. DODGE. The offering was made on the 23d of April.

Mr. PECORA. And the sale was completed within five days?

Mr. DODGE. The actual payment was made within a week.

Mr. PECORA. Yes.

Mr. DODGE. It was called for within a week.

Mr. PECORA. So that it is fair to assume that the original purchase group paid the $27,000,000 for these bonds out of the $28,950,000 that it received from the selling group at 96½?

Mr. DODGE. That is correct.

Mr. PECORA. At no time did the members of the original purchase group put up a single dollar of their own money for these bonds?

Mr. DODGE. It was not necessary, because the bonds were sold. If they had not been sold they would have had to put it up.

The CHAIRMAN. Who were the bankers in that group? These bonds were sold to the bank?

Mr. PECORA. The bankers in the group were the Chase Securities Corporation, as the witness has already testified, Pynchon & Co., Halsey, Stuart & Co., West & Co., and W. S. Hammons & Co.

That is correct, is it not, Mr. Dodge?

Mr. DODGE. That is correct.

Mr. PECORA. Now I show you what purports to be a photostatic reproduction of a statement from the files and records of the Chase Corporation entitled "Thirty Million Dollar General Theatres Equipment, Inc., 10-year 6 Percent Convertible Gold Debentures, dated April 1, 1930, due April 1, 1940." Will you look at it, please, and tell us if you recognize it to be a true and correct copy of such a statement or record contained among the files of originally the Chase Securities Corporation, now the Chase Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(Statement entitled "Thirty Million Dollar General Theatres Equipment, Inc., 10-Year 6 Percent Convertible Gold Debentures, dated Apr. 1, 1930, due Apr. 1, 1940," was thereupon designated "Committee Exhibit No. 160, Nov. 22, 1933", and the same appears in full on page 3643.)

Senator ADAMS. Mr. Dodge, if I get this statement correct, this syndicate had obligated itself by some form of firm obligation to buy these debentures at 27 million?

Mr. DODGE. Yes, sir.

Senator ADAMS. So that if they had not sold a single debenture they would have had to put up the $27,000,000?

Mr. DODGE. Yes, sir.

Senator ADAMS. The actual borrowing was on the first of May, however, after they were assured that they had been sold to the public?

Mr. DODGE. Not quite exactly, Senator Adams. The General Theatres borrowed from the bank the 27 millions. They were not in the position to deliver to the bankers the bonds. They were not issued at the time the contract was made, and the payment for the bonds was called on the first of May by the General Theatres. So that on the first of May the bankers paid to the General Theatres the 27 millions of dollars, and the General Theatres in turn repaid the loan which they had made at the bank.

Senator ADAMS. But at the time of that transaction the public had in fact committed itself to the purchase?

Mr. DODGE. Yes, sir. Not only committed themselves, but had paid.

Senator ADAMS. But had paid?
Mr. DODGE. Yes, sir.
Mr. PECORA. I want to call the committee's attention merely to one part of this statement which has been marked in evidence as "Committee's Exhibit No. 160." It shows the purchase group purchased 30 million dollars of the debentures at 90, a total consideration of 27 million dollars; that it sold the same debentures to a selling group at 96½, or for a total consideration of $28,950,000, yielding a gross profit to the purchase group of $1.950,000; that there were expenses out of that gross profit chargeable against the group amounting to $143,924.90, leaving a net profit to the purchase group of $1,806,075.10, which was allocated among the five members of the purchase group in accordance with their respective interests in the following sums:
Chase Securities Corporation, 24 percent interest, $433,458.02,
Pynchon & Co., 24 percent interest, $433,458.02,
Halsey, Stuart & Co., Inc., 20 percent interest, amounting to $361,215.02,
West & Co., 16 percent interest, amounting to $288,972.02,
W. S. Hammons & Co., 16 percent interest, amounting to $288,972.02,
The total net profit being $1,806,075.10 to this group in the transaction, which never put up a single dollar of its own money.
That is correct, isn't it, Mr. Dodge?
Mr. DODGE. They contracted to buy, Mr. Pecora, and if they had not been sold they would have had to put up the whole $27,000,000.
Mr. PECORA. But the fact is they did not have to put up a dollar of their own money, the original purchasing group?
Mr. DODGE. The merchandising of the securities was successful.
Mr. PECORA. And the merchandising was accomplished in a manner that did not require the purchasing group to put up a single dollar of its own moneys?
Mr. DODGE. Literally that is true.
Mr. PECORA. That is all I want to get, the literal truth. According to this statement, exhibit no. 160, the selling group, on a basis of a 3 percent profit or spread, made gross profits of $900,000, which were distributed among the various participants thereof in proportion to their respective interests. Now, Mr. Dodge, were any trading groups or syndicates organized to assist in the distribution of these debentures to the public?
Mr. DODGE. There was the usual trading account in connection with the underwriting; 10 percent of the amount, as I remember it.
Mr. PECORA. That is, this trading account was formed by the original purchase group?
Mr. DODGE. No; it was formed by the selling group, wasn't it? I want to be sure that I testify correctly there, Mr. Pecora. [After conferring with associates:] Yes; it was formed by the original purchase group, and the total loss in the trading account was $188,000, of which $74,000 was charged to the selling group as per the agreement and to the purchase group $113,000, and that will be found in your statement.
Mr. PECORA. Yes; it is embodied in that statement.
Mr. DODGE. As part of the expenses of the group.

Mr. PECORA. Yes; it was deducted from the gross profit of $1,950,000 which the original purchase group made?

Mr. DODGE. Yes, sir.

Senator ADAMS. What part of that would they charge to the selling group?

Mr. DODGE. One quarter of 1 percent, I think $74,000. It was according to the agreement in the selling group.

Senator ADAMS. But in accordance with that procedure if a local bank, acting as a selling agent, or a local bond house, were to sell on the theory that they were going to have a 3-percent profit, if the trading group made a loss in excess of the 3-percent profit, would the selling group be liable beyond that?

Mr. DODGE. No, sir. I think that the selling-group agreement limited the amount of the expenses to one quarter of 1 percent.

Senator ADAMS. They could not have absorbed it?

Mr. DODGE. No, sir.

Senator ADAMS. So that they would have had 2¼ percent?

Mr. DODGE. No, sir; I think it was a 3-percent gross profit with 1¼ percent as a possible charge.

Senator ADAMS. So they had one and three quarters short?

Mr. DODGE. Two and three quarters short.

Senator ADAMS. Not if you take one and a quarter.

Mr. DODGE. I meant one quarter of 1 percent.

Senator ADAMS. Oh, I thought you said one and a quarter.

Mr. DODGE. I meant one quarter. I am sorry.

Mr. PECORA. Mr. Dodge, can you tell the committee briefly how this trading syndicate sustained this loss?

Mr. DODGE. They oversold bonds to the selling group at 99½ less 3 percent, and in that way acquired a buying power to that extent, when the settlements were finally made, because the bonds were selling at a higher price, were all sold at a loss, and the trading account loss was 3 percent.

Mr. PECORA. Is it not a fact that these trading accounts that you have referred to as the "usual trading account" act as a device resorted to in flotations of securities of this character in order to guide the market and to sort of maintain it during the period of time that the securities are sold to the public?

Mr. DODGE. It enables country-wide selling group of—how many members? I don't remember.

Mr. PECORA. There were over 400 members in this selling group.

Mr. DODGE. There were over 400 members?—to feel that when they offer the merchandise to their customers the market is not going to drop out from under them.

Mr. PECORA. In other words, it is done to give the market an appearance of stability in order to encourage or induce investors to buy the bonds?

Mr. DODGE. No, sir; it was no appearance of stability; it was an actual stability.

Mr. PECORA. It was an actual stability?

Mr. DODGE. Yes, sir.

Mr. PECORA. But the investing public was in no position to know that this actual stability was given to the market by the group interested in selling those securities to the public at a profit; is not that so, Mr. Dodge?

Mr. DODGE. There was no limit on the ability of the public to turn right around and sell those securities at the price at which they bought them.

Mr. PECORA. But now you are answering a question which I did not ask you, I think.

Senator ADAMS. Mr. Dodge, is that stability quite as actual as you suggest? It has a very limited duration, has it not?

Mr. DODGE. It has a limited duration after the full distribution is accomplished. Then as soon as the bankers feel that the distribution after the full distribution is accomplished—then as soon as the bankers feel that the distribution has been made to such an extent that the market can take care of itself, or, I will put it in this way, the child can walk——

Senator ADAMS (interposing). Kind of an incubator process?

Mr. DODGE. The child is allowed to walk by itself.

Mr. PECORA. And the child usually, as soon as it reaches that stage, falls, doesn't it, or stumbles a bit, as soon as this support is taken away from the market?

Mr. DODGE. It did not in this case, sir.

Mr. PECORA. How?

Mr. DODGE. It did not in this case.

Mr. PECORA. I mean usually that happens, doesn't it?

Mr. DODGE. I don't think so. That would be a generalization I would not want to go into. Sometimes it does and sometimes it does not. It depends upon the condition of the bond market at the time the trading account is dissolved and the syndicate is dissolved.

Senator ADAMS. Mr. Dodge, in many cases would not that indicate to the unskilled buyer of bonds the impression that here was a general market participated in by buyers generally, rather than a market created by a limited group which was subject to being immediately withdrawn in some way? Isn't that the impression that would naturally be carried out to the public, and isn't it the impression that is sought to be carried out?

Mr. DODGE. The impression, Senator, as my experience would lead me to believe, on the part of the public is that when they buy securities from reputable houses they expect to have a market immediately in which they can resell if they want to. Now, if they had a market which was far less than what they paid for them, there would be some very hard feelings and the banking house would probably, if that happened many times, not be able to sell any more securities to the public.

Senator ADAMS. I think, Mr. Dodge, it is quite proper for the banking house that sells things to the public to maintain a market. My question is whether or not the banking house is justified, after it goes along for a certain length of time, in just entirely withdrawing.

Mr. DODGE. It does not. As a matter practical, it does not, Senator. The banking house never loses sight of that market.

Senator ADAMS. But you do create a trading account for that purpose, and that trading account has a definite end as a matter of time?

Mr. DODGE. After the child has learned to walk and has been allowed to walk, the parents of the child will not withdraw all care.

Senator ADAMS. The gentleman across the table suggests perhaps you are passing it on over to the public from then on to feed it.

Senator COUZENS. No; the child is public.

Mr. DODGE. The child does have by the bankers, and has had in the past, attention after that time. There is a responsibility on the part of the bankers.

Senator ADAMS. It is a sort of an incubator process, however, artificial?

Mr. DODGE. I did not go back as far as the incubator, Senator.

The CHAIRMAN. Well, but these trading accounts provide expressly for the time of their termination. They are not continued indefinitely. The contract specifies when they are to cease.

Mr. DODGE. As soon as the bankers feel that the market is in a condition to take care of itself the trading account is closed.

Mr. PECORA. That time usually is when the banking group or the original purchase group has succeeded in selling the securities to the public?

Mr. DODGE. I have known trading accounts being continued fo many months and sometimes years, because the bankers have no been successful in the issuance of the securities.

Mr. PECORA. Those are the exceptions, rather than the rule, ar they not?

Mr. DODGE. It would be almost heaven if that were true.

Senator ADAMS. Mr. Dodge, step one further stage. You ar telling us, of course, of the reputable, high-grade banking house anxious to protect its securities, having some regard in the firs instance for their character. There have been in the past—I as sume that is no longer true—banking houses or security houses wh are anxious to put things off onto the market, and who did no feel and assume any responsibility. From the standpoint of a legis lative group, if it were possible to do so, would it occur to yo that it might be wise to prevent those banking houses which d not have that high standing from operating a fictitious marke through a trading account and then withdrawing the support an letting it fall?

Mr. DODGE. Any legislation, Senator, which could keep unprin cipled bankers from selling to the public I would think was good thing.

Senator ADAMS. And the high-grade house would be willing t put up with some restrictions in order to protect the public fro the unscrupulous, I assume?

Mr. DODGE. As long as they are not put entirely out of business.

Senator ADAMS. I do not believe anyone wants to put them ou of business.

Mr. PECORA. Your experience has shown you, has it not, M Dodge, that banking groups frequently quarrel among themselv over a choice piece of financing business?

Mr. DODGE. I think bankers are human as everybody else, M Pecora.

Mr. PECORA. And to the extent that they are so human they hav controversies among themselves?

Mr. DODGE. There is competition. I would not say there were co troversies.

Mr. PECORA. And there are controversies about the division of what might be called the "gravy" representing the spread on the issues? Aren't there, Mr. Dodge?

Mr. DODGE. There is competition to get issues. Now, the competition for the spread—the competition by houses to get business. I do not quite understand what you mean by competition between banking houses in respect to what you call "gravy."

Mr. PECORA. Well, the "gravy" that I referred to is the spread that bankers get through the acquisition by them, by the issuing houses, of securities at a low price and their sale of them to the public almost immediately thereafter at a higher price.

Senator GOLDSBOROUGH. Isn't it a little more distinctive to call it a "profit"?

Mr. PECORA. Well, call it "profit" instead of "spread."

Mr. DODGE. Yes, sir.

Mr. PECORA. I may have been a little bit clumsy by referring to it as "gravy."

Mr. DODGE. Sometimes it is a loss, Mr. Pecora.

Mr. PECORA. Do you recall that there was some such controversy among the bankers who claimed a preferential right to do the financing of the Fox companies at this time, in 1930?

Mr. DODGE. The only controversy, as I testified I think before, was whether or not Halsey, Stuart & Co., who had the preferential right to do the business, would invite these other bankers in.

Mr. PECORA. That is, the Bancamerica-Blair & Co. interests?

Mr. DODGE. Yes, sir.

Mr. PECORA. In connection with that controversy, did you receive a telegram from Harley Clarke dated April 21, 1930, of which I show you what purports to be a photostatic copy?

Mr. DODGE. That is a photostatic copy; yes, sir.

Mr. PECORA. Is that a true copy of such a telegram received by you from Clarke?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer that in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(Photostat of telegram from Harley Clarke to Murray W. Dodge dated Apr. 21, 1930, was designated "Committee Exhibit 161, Nov. 22, 1933.")

Mr. PECORA. The telegram offered in evidence, marked "Committee Exhibit No. 161", reads as follows [reading]:

APRIL 21, 1930.

MURRAY W. DODGE, *Chase Securities Corporation, New York, N.Y.*

Following wire received from Elisha Walker:

"You will recall that on the night you purchased Mr. Fox's stock you assured me that Bancamerica-Blair group would participate equally with the Halsey, Stuart group in any present financing of the Fox companies. Thereafter you discussed a plan with us to which we advised you our counsel had certain legal objections. We made certain suggestions to overcome these objections and understood that you would give them serious consideration. Since then we have heard nothing further from you but have read in the papers of the issue of stock and 1-year notes by the Fox companies. Personally, I would be glad to hear from you before our group takes any proceedings which our counsel may advise for the enforcement of the rights of ourselves and our syndicate under our existing contract with the Fox companies.

"H. L. CLARKE."

Now, Mr. Dodge, does it not appear from this telegram that at least one banking group, namely, the Bancamerica-Blair & Co. group, felt that they wanted, and felt resentful over the fact that they had not been permitted to take, any of what you call this "risk" with regard to the $30,000,000 of debentures?

Mr. DODGE. No, sir. This did not refer to the 30 million dollars of debentures. It referred to the 55 million dollars of Fox Film notes which Halsey, Stuart & Co. were handling.

Mr. PECORA. Which Halsey, Stuart & Co. were issuing at about the same time?

Mr. DODGE. Which they had already bought. At least agreed to buy.

Mr. PECORA. Will you produce from among the files and records of the Chase Corporation document identified as No. 65-57A consisting of a memorandum addressed to Mr. Wiggin?

Mr. DODGE. Yes, sir.

Mr. PECORA. Have you got that memorandum?

Mr. DODGE. Yes, sir.

Mr. PECORA. The date of it is February 7, 1931, is it not?

Mr. DODGE. A year later than what we were discussing.

Mr. PECORA. Yes. I say, that is the date of it?

Mr. DODGE. Yes, sir.

Mr. PECORA. And it is signed with your initials "M. W. D.", and addressed to Mr. Wiggin, is that right?

Mr. DODGE. Yes, sir.

Mr. PECORA. And it relates generally to the situation existing in February 1931 with regard to the Fox Film and Fox Theatres Corporation and General Theatres Equipment financing, does it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, merely on the matter of the terminology that I employed a few moments ago, do you find that you yourself used the term "gravy" in your communication to Mr. Wiggin in the following expression which is embodied in this memorandum of yours—I read it from the bottom of page 2 thereof—as follows:

> With Halsey, Stuart out, it is possible for me to discuss the whole financing with Kuhn, Loeb again, a thing that I am loath to do unless necessary, as the split up of the gravy would hurt my feelings.

Mr. DODGE. Mr. Pecora, I would say that you had one on me. I would also like to explain that.

Mr. PECORA. So that my use of the term "gravy" as applied to these profits is not a violent or a harsh use, is it?

Mr. DODGE. No, sir.

Mr. PECORA. It is one that you yourself used long before I ever did.

Mr. DODGE. I did not use it in this connection, however: in connection with profits. Halsey, Stuart & Co. withdrew from this business in 1931, that was the assistance in the refinancing of the $55,000,000 of 1-year notes that had been put out 1 year before and which were maturing on April 15. Then the Chase Securities Corporation had to enter into the situation and try and get this $55,000,000 of maturity taken care of.

If they had not done so and the Fox Film Co. had gone into the hands of a receiver it would have affected very adversely, of course, the stock of the Fox Film Co., which was owned by the General

Theatres Co., on which the General Theatres Co. had 30 million dollars of debentures which had been put out by a group headed by the Chase Securities Corporation. Now what I really meant was that I anticipated that going to Kuhn, Loeb & Co. after Halsey, Stuart had withdrawn that we would be on the defensive, and that therefore what I called "gravy" was a certain amount of—

(The witness hesitated.)

Senator COUZENS. It is a difficult explanation, isn't it?

Mr. DODGE. It is a difficult explanation, but I would say that it was the prestige—that was the word I was trying to think of.

Senator ADAMS. In a culinary sense you were getting into the soup.

Mr .DODGE. I meant prestige.

Senator COUZENS. I think you are not making it any better. You had better stop.

Mr. PECORA. Stick to gravy.

Senator COUZENS. Stick to gravy.

Mr. DODGE. All right, sir. The gravy will stick to me.

Senator TOWNSEND. Go ahead, Mr. Dodge.

Mr. DODGE. No; I am through. I will agree with you, Senator Couzens. I will stick to the gravy.

Senator COUZENS. Yes; I think that is better.

Mr. PECORA. Now, after the receipt by you of this telegram that has been marked in evidence as committee's exhibit no. 161, and which was the telegram addressed to you by H. L. Clarke on April 21, 1930, did you on the following day receive another telegram from Clarke, photostatic copy of which I now show you [handing same to the witness]?

Mr. DODGE. Yes, sir.

Mr. PECORA. Is that a true copy of such a telegram?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer it in evidence and ask to have it spread upon the records.

The CHAIRMAN. Let it be admitted in evidence and placed in the record.

(Photostatic copy of telegrapm from Mr. Clarke to Murray W. Dodge, dated Apr. 22, 1930, was received in evidence and marked "Committee Exhibit No. 162 of Nov. 22, 1933.")

Mr. PECORA. The telegram received in evidence as committee exhibit 162 reads as follows:

EVANSTON, ILL., *April 22, 1930.*

MURRAY W. DODGE,
Chase Securities Corporation, New York, N.Y.:

I suggest the following wire to Walker: Will talk to you early Tuesday. "Re your wire I recall that before buying Fox stock in response to our telephone inquiry I stated that I had given out no preferential financing rights and that I was expecting your group to participate in the financing. Prior this conversation with you and also subsequently I discussed with E. R. Tinker your representative a plan in which Bancamerica-Blair group and Halsey, Stuart would equally participate.

"After your group had had a 2-day conference Mr. Tinker informed me that your group did not wish to be constructive in the matter but he had a proposition to make for your group. I carefully considered the conditions of this proposition and decided that they were not at all for the best interests of the Fox Companies. I therefore decided upon a plan which I considered to be for the companies' best interests and proceeded with same. Also shall personally be glad to talk to you and wish you to accept the following in all sincerity.

Any legal action by your group will cause a bitter controversy which will be aired in the newspapers to the benefit of no one and the certain detriment of all. I therefore urge you to accept my conference suggestion."

HARLEY.

Mr. PECORA. Did you send a telegram to Mr. Elisha Walker in the language suggested by Mr. Clarke in this telegram to you?

Mr. DODGE. I do not understand, Mr. Pecora, that Mr. Clarke suggested that I send the wire. He was asking me whether——

Mr. PECORA. Well, he says in this telegram to you "I suggest the following wire to Walker". Did he propose that he, Clarke, would send the telegram?

Mr. DODGE. Yes.

Mr. PECORA. And wanted to get your opinion as to the advisability of sending that telegram?

Mr. DODGE. Yes.

Mr. PECORA. I see. Well, how did you advise Mr. Clarke on that, if you advised him at all?

Mr. DODGE. If I advised him at all I would advise him that I was perfectly satisfied with the telegram. Whether it was sent or not I do not know.

Mr. PECORA. Now, was a conference held subsequent to April 22, 1930 with any representatives of Bancamerica-Blair group?

Mr. DODGE. Between whom?

Mr. PECORA. Between anybody.

Mr. DODGE. There certainly was, Mr. Pecora.

Mr. PECORA. What was the outcome of it all?

Mr. DODGE. That the Bancamerica group, which included Dillon, Read & Co. and Lehman Bros., joined with Halsey, Stuart with, I think, 40 percent interest in the financing.

Mr. PECORA. Forty percent interest of Halsey, Stuart's participation? Is that what you mean?

Mr. DODGE. Of Halsey, Stuart's. Halsey, Stuart had 100 percent and they took 40 percent.

Mr. PECORA. Is that the 55 million dollar note that Halsey Stuart had?

Mr. DODGE. Yes; the 55 million dollar note; the 1-year notes of Fox Film.

Mr. PECORA. Yes. And the Bancamerica-Blair group were permitted by Halsey Stuart to participate to the extent of 40 percent in that particular piece of financing?

Mr. DODGE. May I make sure that it was 40 percent?

Mr. PECORA. All right.

Mr. DODGE. So as to get that correct, Mr. Pecora, I have taken it from the records of the Chase Securities. Halsey Stuart & Co. finally had a 38 percent interest. Blair-Dillon Reed-Lehman group had a 40 percent interest. Chase Securities Corporation a 10 percent interest. Chatham Phenix 5 percent, Hallgarten 5 percent, Graham Parsons 2 percent, making 100 percent.

Mr. PECORA. Now you have already told this committee this morning that the General Theatres Equipment Co. sold to a syndicate headed by Pynchon & Co. 240,000 shares of the Fox Film Class A stock which was out of that block of 1,600,000 shares, at $30 a share. You recall that, do you not?

Mr. DODGE. I recall that I stated that they sold 240,000 shares of Fox A stock and 350,000 shares of General Theatres Equipment common stock.

Mr. PECORA. Of the G.T.E. common stock?

Mr. DODGE. Yes.

Mr. PECORA. But I am confining this inquiry now, for the time at least, only to that portion of the transaction which related to the 240,000 shares of the Fox Film class A stock at $30 a share.

Mr. DODGE. All right, sir.

Mr. PECORA. Now, have you got a memorandum of the date of the formation of that syndicate by Pynchon & Co., of which Pynchon & Co. were the managers?

Mr. DODGE. The actual contract was signed on the 17th or 18th.

Mr. PECORA. On the 17th or 18th of April 1930?

Mr. DODGE. Either the 17th or 18th.

Mr. PECORA. Who were the members of that syndicate?

Mr. DODGE. Pynchon & Co.—the final members of that syndicate?

Mr. PECORA. The final members of that syndicate.

Mr. DODGE. Not on that date. That date I understand Pynchon & Co., Chase Securities, West & Co., Hammons & Co., and Eric & Dreyers.

Mr. PECORA. Yes. Was that the final make-up of the syndicate?

Mr. DODGE. No, sir. The final make-up was a 9-percent amount that was left over.

Mr. PECORA. For whose benefit?

Mr. DODGE. Halsey, Stuart & Co. would have had a right to take that 9 percent, but they had already purchased 200,000 shares.

Mr. PECORA. At the same price? At $30 a share?

Mr. DODGE. Yes. That was what you might call a loose end; and the syndicate, including Chase Securities Corporation, agreed that myself and Mr. Ingold, if we wanted it, should have a 9 percent interest.

Mr. PECORA. Between you?

Mr. DODGE. Between us.

Mr. PECORA. And did you and Mr. Ingold divide that 9 percent interest in these proportions: Three fourths thereof to you and one fourth to Ingold?

Mr. DODGE. 6.75 to me and 2.25 to Ingold.

Mr. PECORA. Which is the proportions of one fourth and three fourths of this 9 percent?

Mr. DODGE. Yes.

Mr. PECORA. Now you and Ingold at that time were directors of General Theaters Equipment, were you not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And, as a matter of fact, Mr. Ingold was one of the three voting trustees for the common stock of General Theatres Equipment?

Mr. DODGE. Yes, sir.

Mr. PECORA. Have you a memorandum of the respective interests of the five original members of that syndicate?

Mr. DODGE. Pynchon & Co. had 28.35.

Mr. PECORA. Yes.

Mr. DODGE. Chase Securities 20.25, West & Co. 16.20, W. S. Hammons & Co. 16.20, Eric & Drevers 10 percent. And Chase Securities Corporation——

Mr. PECORA. And Pynchon & Co., for others, 9 percent?

Mr. DODGE. That was right.

Mr. PECORA. And the others proved to be you and Mr. Ingold?

Mr. DODGE. After all of the other members of the syndicate had approved of our having it.

Mr. PECORA. I show you now what purports to be a photostatic reproduction of the contract or agreement that was entered into by the various members of this syndicate. Will you please look at it and tell me if you recognize it to be a true and correct copy of such agreement [handing same to Mr. Dodge]?

Mr. DODGE. That was on what date?

Mr. PECORA. April 18, 1930.

Mr. DODGE (after examining same). Yes, sir; that is correct.

Mr. PECORA. I offer that in evidence and ask to have it spread upon the record.

The CHAIRMAN. Let it be admitted and placed in the record.

(Original group agreement between Pynchon & Co., Chase Securities Corporation, West & Co., W. S. Hammons & Co., Pynchon & Co. for others, Eric & Drevers, dated Apr. 18, 1930, was received in evidence, marked "Committee Exhibit 163 of Nov. 22, 1933", and is here printed in the record in full as follows:)

COMMITTEE'S EXHIBIT NO. 163, NOVEMBER 22, 1933

ORIGINAL GROUP AGREEMENT BETWEEN PYNCHON & CO., CHASE SECURITIES CORPORATION, WEST & CO., W. S. HAMMONS & CO., PYNCHON & CO. FOR OTHERS, ERIC & DREVERS, DATED APRIL 18, 1930, RELATING TO FOX FILM CORPORATION CLASS A COMMON STOCK

FOX FILM CORPORATION CLASS A COMMON STOCK ORIGINAL GROUP

Pynchon & Co. have entered into an agreement dated April 18, 1930, with General Theatres Equipment, Inc. (a Delaware corporation), whereby Pynchon & Co. and their associates, the parties to this agreement, have agreed to purchase or to procure purchasers for 240,000 shares of the Class A Common Stock of Fox Film Corporation for the sum of $7,200,000, if, when, and as sai shares are received by General Theatres Equipment, Inc., under the terms o their agreement with Fox Theatres Corporation dated April 17, 1930. Deliv ery of stock purchased under this agreement may be in the form of specia certificates for restricted registration.

In respect to the agreement of April 18, 1930, the respective interests of th undersigned therein, and in the profits, risks, and obligations thereof, are a follows: Pynchon & Co., 28.35 percent; Chase Securities Corporation, 20.2 percent; West & Co., 16.20 percent; W. S. Hammons & Co., 16.20 percent Pynchon & Co. for others, 9 percent; Eric & Drevers, 10 percent.

Pynchon & Co. are hereby appointed Managers of this Original Group unde the terms of this agreement, and are authorized to keep the books of thi Original Group and are hereby given full power and authority to act in thei discretion on behalf of the undersigned in all matters relating to this Origina Group and any Syndicates and/or Selling Groups which may be formed, an such general authority is not to be limited by any particular power herei mentioned.

In acting as aforesaid, Pynchon & Co. will make no charges for thei services, but this Original Group may be charged with all expenses connecte with its formation and with the formation of any Syndicates and/or Sellin Groups which may be formed, and with the purchase and/or distribution o said shares including legal expenses and commissions and the usual broke

ages (including brokerage to Pynchon & Co. permitted or required under the rules of the New York Stock Exchange or any other Exchange) to the extent not borne by any Syndicate and/or Selling Group.

In addition to the stock to be purchased under the terms of this agreement as provided above, Pynchon & Co. as Managers of this Original Group are authorized to trade in Fox Film Corporation Class A Common Stock for the account of this Group provided that the position of such Trading Account shall not exceed 150,000 shares for their long or short account.

Pending the formation of any such Syndicates and/or Selling Groups, and the taking up of said shares of Class A Common Stock thereby, or other sale or other disposition thereof for undivided joint account, the undersigned and each of them hereby expressly authorize Pynchon & Co. on their behalf, from time to time or at any time, to make any and all arrangements deemed by them advisable in connection with the taking up and the carrying, either by themselves or others, of said shares of Class A Common Stock, including power in their discretion to borrow money, on demand or on time and at such rate or rates of interest as they may approve, from The Chase National Bank of the City of New York or by other banking institution or institutions in the amount necessary to effect payment for said Class A Common Stock, when and as the same is ready for delivery and acceptance, and to pledge on behalf of the undersigned, as security for money so borrowed, the Class A Common Stock so acquired together with the agreements and obligations of the undersigned in respect thereof and hereunder; and in connection with effecting any such loans or other carrying arrangements Pynchon & Co. are expressly authorized by the undersigned and each of them to sign any and all notes, collateral loan agreements, requests for advances, or other contracts or agreements in connection with carrying arrangements, which they may deem necessary or advisable for such purposes, in the name of the undersigned or otherwise: provided, however, that the liability of the undersigned on all such loans or in respect of any such carrying arrangements is to be the same as their respective interests above stated and that their liability is to be several and not joint. It is understood that any of the undersigned may, if they so desire, withdraw their quota of said Class A Common Stock and carry the same, pending and subject to the disposition thereof for this Original Group Account, in which event there shall be no liability of the members so withdrawing in connection with loans or carrying arrangements made as above provided.

In case for any reason acceptances of participation in the Syndicate and/or Selling Group to be formed as above provided, including amounts taken by any of the undersigned for their own account, are not received up to the full amount of such group or groups, then the backwash or unsubscribed portion shall be subscribed for by the undersigned in the proportions in which they are respectively interested in the above-mentioned contract relating to said Class A Common Stock. The amount so subscribed, however, shall be held in an undivided joint account and all sales effected by any of the undersigned from any such participations shall be for the pro rata benefit of the undersigned in accordance with their aforesaid respective interests in this Original Group.

Upon the termination of this Group or earlier upon request of Pynchon & Co., each of the undersigned agrees that it will take up and pay for its pro rata share of Class A Common Stock to be purchased by or then held by or for this Original Group, at the net cost thereof to the Group, and also to defray the expenses or meet liabilities of the Group. Until the termination of the Group all said Class A Common Stock so taken up by the undersigned shall be carried subject to call for Original Group Account.

This group shall continue for a period of six months from the date hereof, subject to the approval of a majority in interest of the members of the Group to extend the same for an additional period of six months and subject to the right of the Managers to terminate the account at any time in their discretion.

Dated as of April 18, 1930.

Pynchon & Co., by James W. Sims, partner (28.35 percent); Chase Securities Corporation, by Murray W. Dodge, vice president (20.25 percent); West & Co., by Hugh Partridge, partner (16.20 percent); W. S. Hammons & Co., by A. Spring (16.20 percent); Pynchon & Co., for others, by James W. Sims, partner (9 percent); Erie & Drevers, by Louis J. Drevers, partner (10 percent).

Mr. PECORA. Now, under this agreement this syndicate was to operate virtually as a pool, was it not?

Mr. DODGE. They were to purchase the stock and distribute it.

Mr. PECORA. Purchase the stock and distribute it?

Mr. DODGE. Yes, sir.

Mr. PECORA. And were not Pynchon & Co., as managers of this syndicate, also authorized to conduct market operations on both the buying and selling side of the stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. Would you say that was a pool?

Mr. DODGE. It was a trading account.

Mr. PECORA. Would you also call it a pool?

Mr. DODGE. If the name "pool" is synonymous with "trading account" I would; yes.

Mr. PECORA. Well, is it in your opinion synonymous with "trading account"?

Mr. DODGE. In market parlance?

Mr. PECORA. In market parlance or street parlance?

Mr. DODGE. No, sir. I should say a pool was a little different from this. This is an account which is formed to actually purchase from the company certain securities and to redistribute it. A pool——

Mr. PECORA. When you say "to redistribute it" you mean to sell it to the public at a profit, do you not?

Mr. DODGE. Yes, sir; naturally. Now, a pool would be formed by a group—this group—to go into the market and buy securities and then resell on the market at a profit.

Mr. PECORA. Then, the only difference between a pool and a trading account's operations of this kind of a trading account is that the pool would buy the stock in the open market and then resell it in the open market at a profit, whereas the trading account buys it from the issuing corporation and not in the open market?

Mr. DODGE. As a part of a large financial deal; yes, sir.

Mr. PECORA. That is the only difference?

Mr. DODGE. Yes, sir.

Mr. PECORA. Merely the method or the source from which the stock to be sold at a profit is originally acquired by either the pool or the trading account? That is the only difference, is it not?

Mr. DODGE. I would say that was it.

Mr. PECORA. Yes. The market operations involved in the resale of the stock so acquired to the public, or, as you call it, the distribution of the stock so acquired to the public, would be virtually identical in both instances, would they not?

Mr. DODGE. There are two ways of handling a situation of this kind. One would be through the resale through a group of other bankers all over the country.

Mr. PECORA. That is, through a distributing or selling group?

Mr. DODGE. Through a distributing or selling group. And the other would be to sell on the market. Now if the market will take the stock it is obviously better to sell on the market.

Mr. PECORA. This particular trading group under this agreement marked "Committee Exhibit 163" in evidence, was to distribute or resell the stock at a profit in the open market, was it not?

Mr. DODGE. That is the way it was done.

Mr. PECORA. Yes; and that is the way it was formed to do?

Mr. DODGE. Yes, sir.

Mr. PECORA. Under this agreement?

Mr. DODGE. Yes, sir.

Mr. PECORA. I am not going into the technical verbiage of the agreement.

Mr. DODGE. That is true.

Mr. PECORA. That is the general substance of it?

Mr. DODGE. That is true.

Mr. PECORA. Now, this group bought these 240,000 shares at $30 a share from the General Theatres Equipment Co., or for a total consideration of $7,200,000; is that right?

Mr. DODGE. Yes, sir.

Mr. PECORA. Who financed that purchase for this group?

Mr. DODGE. The syndicate managers borrowed the money in the first instance.

Mr. PECORA. From whom?

Mr. DODGE. From the Chase Bank.

Mr. PECORA. Borrowed the entire purchase price, did it not—$7,200,000?

Mr. DODGE. Yes. That was done on the 18th, at the time the whole clearance of $100,000,000 was accomplished.

Mr. PECORA. Yes. In other words, the Chase Bank financed the operations of this pool or trading account up to the limit, to the full amount?

Mr. DODGE. Yes, sir. Secured by the stock. And secured by the agreements by the members to buy.

Mr. PECORA. That is, secured by the agreements of the syndicate members?

Mr. DODGE. Yes, sir.

Mr. PECORA. But the only collateral was the very stock, the 240,000 shares of stock that this pool was organized to purchase?

Mr. DODGE. I think the agreement will also be considered as collateral. It was by the bank.

Mr. PECORA. No; the agreement is only a promise to buy, is it not? It is not collateral?

Mr. DODGE. It was a contract of purchase.

Mr. PECORA. But you would not call it collateral in the ordinary sense of the term, would you?

Mr. DODGE. I think so. I think the bank would. I think the bank would have demanded it as additional collateral.

Mr. PECORA. Now under this agreement of April 18, 1930, Pynchon & Co., as managers of the pool or trading account, were authorized to take a long or short position, in their discretion or judgment, were they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. In other words, they could have sold the stock of the company short if in their judgment it was advisable to do it in order to enable the pool to distribute these 240,000 shares to the public at a profit?

Mr. DODGE. Sold the Fox A stock short; yes.

Mr. PECORA. Well, this dealt with Fox A stock.

Mr. DODGE. Well, I did not know just what you meant—to sell the stock of the company. It did not belong to the company. It was the Fox A stock.

Mr. PECORA. Let us get it clear. The General Theatres Equipment on April 18, 1930, owned and held in its treasury 1,600,000 shares of the Fox Film A stock which it had acquired for 48 million dollars or at $30 a share?

Mr. DODGE. And immediately turned it over, over the table, to this group.

Mr. PECORA. And immediately turned over 240,000 shares thereof to this group?

Mr. DODGE. To this group; yes.

Mr. PECORA. Yes. Now how many of the directors of Genera Theatres Equipment Co. were interested in this trading account or group?

Mr. DODGE. I would say that all the directors, who at the same time were the bankers——

Mr. PECORA. Yes.

Mr. DODGE. That would be the directors who represented Chase Securities Corporation——

Senator COUZENS. By name whom?

Mr. DODGE. Myself. Pynchon & Co. were represented by Mr Ingold. West & Co. were represented by Mr. Watson. W. S. Hammons & Co. by Mr. Hammons. And that would be all. Four.

Mr. PECORA. The fifth member, of the firm of Eric & Drevers, wa not represented on the board of the General Theatres?

Mr. DODGE. No, sir.

Mr. PECORA. Do you recall what the market quotation of the Fo Film A stock was on April 18, 1930?

Mr. DODGE. A low of 40 and a high of 48, I think. No. You aske me the 18th. The 17th. The 18th was a holiday.

Mr. PECORA. Well then, the 17th.

Mr. DODGE. The 17th was: Low 40 and 48 was the high.

Mr. PECORA. The 18th was a holiday?

Mr. DODGE. Yes, sir.

Mr. PECORA. What holiday?

Mr. DODGE. Good Friday.

Mr. PECORA. Now will you be good enough to tell this committe Mr. Dodge, how it came about that at a meeting of the board of di rector of the General Theatres Equipment Co. they voted to sell t this group that included five of its own directors, these 240,000 share of the Fox Film A stock which it had in its treasury, at $30 a share when the market price of the stock was from 10 to 18 points abov that?

Mr. DODGE. I think I testified before, Mr. Pecora, that the com pany had purchased 1,600,000 shares of stock and found that it coul not finance the total amount. That therefore they wished——

Mr. PECORA. Now, just a moment there. Did not the Genera Theatres borrow from the Chase National Bank in order to enabl it to purchase that 1,600,000 shares of Fox Film A stock?

Mr. DODGE. No, sir.

Mr. PECORA. Well, it issued 30 million dollars of debentures?

Mr. DODGE. Yes, sir.

Mr. PECORA. In order to enable it to finance that?

Mr. DODGE. Yes, sir.

Mr. PECORA. And it also sold some of its stock?

Mr. DODGE. Yes, sir.

Mr. PECORA. To raise the balance of that 48 million dollars?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now go ahead with your statement of the reason why, or how it came about, rather, that the directors of General Theatres Equipment voted to sell to a syndicate that included five of its own directors——

Mr. DODGE (interposing). Well, they decided——

Mr. PECORA. What is that?

Mr. DODGE. They decided, after consultation with the bankers, that all they could finance through the General Theatres was 1 million shares. One hundred and sixty thousand shares was supposed to be purchased by Mr. Fox under the contract.

Mr. PECORA. Well, that has nothing to do with this particular syndicate sale. Mr. Fox's transaction is separate and distinct from this, is it not?

Mr. DODGE. There were 600,000 shares which in the financing the General Theatres wished to dispose of, and of which 160,000 shares was supposed to be purchased by Mr. Fox. They persuaded Halsey, Stuart & Co. to take 200,000 shares of stock. It left 240,000 shares to be disposed of, and the negotiations were carried on by the company's bankers and the officers of the company for the purchase of those 240,000 shares of stock, or, as you say, a liability of 720,000, and 350,000 shares of General Theatres common stock.

Mr. PECORA. Well, the directors approved it, didn't they? The board of directors approved the transaction?

Mr. DODGE. I did not act on it. I acted as a banker.

Mr. PECORA. The board of directors of the General Theatres Equipment necessarily had to approve this sale of the 240,000 shares of Fox Film A stock to this syndicate or trading account at $30 a share, did they not?

Mr. DODGE. Yes, sir.

Mr. PECORA. Well, that sale was made at a time when the stock was selling in the open market at from $40 to $48 a share, wasn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. This very stock that you had agreed to sell to this syndicate at $30 a share was selling in the open market at $40 to $48 a share.

Mr. DODGE. The difference there is that nobody knew at that time, and the bankers certainly did not know, when the 800,000 shares of Fox A stock, having been issued before, and the 1,600,000 shares then being issued, whether the market would not go down under that new stock, or go to pot. General Theatres Equipment decided it could only finance 1,000,000 shares at $30, and wanted to handle without any risk to itself, at the same price, 600,000 shares of stock.

Mr. PECORA. And it proceeded to do that by making agreements to sell out the balance of those 600,000 shares to three interests, one of them being William Fox to the extent of 160,000 shares, and

another being Halsey, Stuart & Co. to the extent of 200,000 shares, and the third being the other trading account that we are speaking about, to the extent of 240,000 shares.

Mr. DODGE. To whoever would take it, and the bankers agreed to take it.

Mr. PECORA. Did they make any public offering? When you say "To whoever would take it", there wasn't any public offering made to sell this stock at $30 a share, was there?

Mr. DODGE. The offering would naturally have to be made to the bankers first. They had a preferential right to take it.

Mr. PECORA. And the bankers included Chase Securities Corporation, of which you were a vice president?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the bankers included Pynchon & Co.?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the bankers included West & Co.?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the bankers included W. S. Hammons & Co.?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the bankers for the Fox interests include Halsey, Stuart & Co.?

Mr. DODGE. Yes, sir.

Mr. PECORA. So that this stock, worth in the market from $40 to $48 a share, was sold to the extent of 600,000 shares to persons or groups identified almost entirely, with the exception of William Fox, with the banking interests that financed General Theatres Equipment, Inc.?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, did this group of which Pynchon & Co. were managers, this trading account rather, finance this purchase for $7,200,000? I mean these 240,000 shares, out of its own resources, or did they borrow the money for that transaction?

Mr. DODGE. They borrowed the money in the first instance.

Mr. PECORA. From whom?

Mr. DODGE. From The Chase National Bank, on the 18th, at the time this whole thing was made. I understand that some of the members of the group—and I do not think it has been disclosed, although it should be disclosed—that one half of the interest the Chase Securities Corporation had in this matter was allocated by them to the Shermar Corporation.

Mr. PECORA. And that was Mr. Wiggin's family company.

Mr. DODGE. Yes, sir. I think it was done within a few days. In other words, after the Easter holiday, on Monday, that the Chase Securities Corporation and the Shermar Corporation took up their proportions—well, the Shermar Corporation took up its share.

Mr. PECORA. Well, the Chase National Bank financed the purchase on behalf of this trading account or pool, didn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. You say that General Theatres Equipment found it necessary to make this sale to this group because it could not finance that portion of it?

Mr. DODGE. Yes, sir.

Mr. PECORA. Well, as a matter of fact, hadn't General Theatres Equipment obtained practically all of its financing through the Chase National Bank?

Mr. DODGE. Yes, sir.

Mr. PECORA. And in this case the Chase National Bank financed this trading account for the purchase of those 240,000 shares?

Mr. DODGE. The General Theatres Equipment, Inc., did not finance this, because they passed on the liability almost immediately to this group, to Halsey, Stuart & Co., and, presumably, to Mr. Fox.

Mr. PECORA. Did this particular group that took the 240,000 shares get the money with which to buy those shares, namely, the sum of $7,200,000, from the Chase National Bank?

Mr. DODGE. On the 18th; yes, sir.

Mr. PECORA. Why couldn't General Theatres Equipment have obtained that loan for itself, and held for its own benefit this block of 240,000 shares of Fox Film stock, then worth in the market from $40 to $48 a share, instead of selling it at $30 to a syndicate that included directors of the General Theatres Equipment, Inc., yourself being one of the directors?

Mr. DODGE. In that case, General Theatres Equipment would still have had a liability which they did not want to have. They passed the liability on to others. They retained 1,000,000 shares which they financed.

Mr. PECORA. Doesn't this look like the directors of General Theatres Equipment voting to themselves a good thing?

Mr. DODGE. We did not vote them to ourselves, but——

Mr. PECORA (interposing). All of the directors approved the transaction, didn't they?

Mr. DODGE. The total negotiations involved in this 103 million dollars of financing was negotiated by the bankers with the officers of the company, which involved 30 million dollars of debentures, 350,000 shares of the common stock of General Theatres Equipment, which amounted at $37.50 a share to 13 million dollars, and 240,000 shares of the Fox A stock, in order to effect the total financing. Now, that was done by the bankers in negotiation with the company's officers. And at the directors' meeting there was no vote cast by the representatives of the bankers. They could not.

Mr. PECORA. When you say that was done by the bankers, you are, in effect, telling the subcommittee that that was done by the very persons who got the benefit of the transaction, which enabled them to acquire 240,000 shares from General Theatres Equipment of the Fox Film A stock at $30 a share, at the very time when the market price for that stock was from $40 to $48 a share. Isn't that a fact?

Mr. DODGE. I can only answer that question by saying it was a part of the transaction that the same bankers purchased from General Theatres Equipment 350,000 shares of common stock. There did happen to be a much larger profit than we anticipated from the commitment in the Fox A stock, and, on the other hand, there was a very large loss in the common stock which we purchased from General Theatres Equipment. We took the risks of the business. We did not know whether the Fox A stock would go below $30 or not. And we did not know whether the General Theatres Equipment stock

would be sold or not. As a matter of fact, that stock was not sold, which caused a great big loss, and which wiped out the profits in the other deal. However, if you ask whether the Fox A stock was profitable, I say yes.

Mr. PECORA. And it was very profitable.

Mr. DODGE. Yes, sir. It went up instead of going down.

Mr. PECORA. That is what I am concerning myself with in this examination. That this transaction, under which General Theatres Equipment sold this Fox Film A stock at $30 a share to a syndicate composed in large part of members of its board of directors at a time when that stock had a market value of from $40 to $48 a share. That is what I am now confining myself to.

Mr. DODGE. I know, and it is only due to me to point out that this was not an isolated transaction.

Mr. PECORA. And then it was a transaction in connection with which the same trading account members acquired from General Theatres Equipment a block of its own common stock, namely, 350,000 shares, and at what price did it acquire that common stock?

Mr. DODGE. At $37.50 net to the company.

Mr. PECORA. What was the market quotation for the stock at that time?

Mr. DODGE. The market quotation?

Mr. PECORA. Yes.

Mr. DODGE. I will have to see [looking for some papers].

Mr. PECORA. Well, at any rate the market was up at a point more than $37.50 a share, wasn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, Mr. Dodge, are you familiar with the operations of this pool or trading account formed under this agreement of April 18, 1930, which has been marked in evidence "Committee Exhibit No. 163"?

Mr. DODGE. I am not familiar with the operations of it, but I am familiar with what the results were.

Mr. PECORA. Very well. Please tell this subcommittee the results of the operations of that trading syndicate.

Mr. DODGE. The profit was approximately 4 million dollars.

Mr. PECORA. To be exact the profit was $3,941,383.03 after deduction of expenses, wasn't it?

Mr. DODGE. It was $3,941,383.03.

Mr. PECORA. Yes; that was the net profit, was it not?

Mr. DODGE. Yes, sir.

Mr. PECORA. And within a short period of time, beginning on April 18, 1930, did this pool account make this profit of nearly 4 million dollars?

Mr. DODGE. In approximately 2 weeks.

Mr. PECORA. In about 2 weeks time?

Mr. DODGE. Yes, sir.

Mr. PECORA. And the members of this pool never put up a dollar of their own money in the operation? They borrowed all the money from the Chase National Bank, didn't they?

Mr. DODGE. No, sir; that is not quite true. Some of the members took up their stock and did not borrow.

Mr. PECORA. Well, let us see about that. At the outset the Chase National Bank loaned to this group, to this pool, $7,200,000 with which to finance the purchase of 240,000 shares from General Theatres Equipment, didn't it?

Mr. DODGE. That is true, as I understand it, and all but the Shermar Corporation did that, and it took up its interest as soon as the holiday was over, of Monday.

Mr. PECORA. That was the Shermar Corporation owned by Mr. Wiggin, who was then the executive head of the Chase National Bank?

Mr. DODGE. Yes, sir.

Mr. PECORA. And all of the other members had this transaction in their behalf financed by the Chase National Bank?

Mr. DODGE. Yes, sir.

Mr. PECORA. And inside of 2 weeks' time made a profit of nearly 4 million dollars.

Mr. DODGE. Yes, sir. The market went up.

Mr. PECORA. What was the course of market prices in that 2 weeks' time in the matter of the stock of Fox Film A?

Mr. DODGE. Do you want it day by day?

Mr. PECORA. Well, take beginning with the 18th of April, or rather the 21st of April, because the 18th was a holiday, and the 19th was a stock-exchange holiday, and the 20th was Sunday. Now, begin on Monday, the 21st of April and give the market quotations for the period of time thereafter that this pool operated.

Mr. DODGE. I have the information if you will give me the identifying number of that paper.

Mr. PECORA. The identifying number is 63-26A.

Mr. DODGE (looking through some papers). Mr. Pecora, I now have that paper.

Mr. PECORA. All right. Proceed to give the figures.

Mr. DODGE. On April 16 the market quotation was 42½; on the 17th it was 48. There was a holiday on the 18th, and on the 19th and the 20th was Sunday. On the 21st the market quotation was 53⅜; on the 22d it was 55; on the 23d it was 53⅞; on the 24th it was 54¾; on the 25th it was 56; on the 26th it was 55¾. The 27th was Sunday. On the 28th it was 53½; on the 29th it was 53½; and on the 30th it was 55¼. That covers the period up to May 1.

The CHAIRMAN. Up to what date?

Mr. DODGE. Up to and including April 30, 1930.

The CHAIRMAN. But what was the last quotation?

Mr. PECORA. Mr. Chairman, on the 17th, the day that this transaction was agreed to by the Board of General Theatres Corporation, the market quotation was 48. The next three days were either holiday or Sunday. April 21st it was 53⅜; on the 22nd it was 55; on the 23d it was 53⅞; on the 24th it was 54¾; on the 25th it was 56; on the 26th it was 55¾. The 27th was Sunday. On the 28th it was 53½; on the 29th it was again 53½; and on the 30th it was 55¼.

The CHAIRMAN. All right.

Mr. PECORA. Now, Mr. Dodge, do you know when this pool distributed its profits?

Mr. DODGE. Some time the first part of May, the first week I think.

Mr. PECORA. Do you know how many times during the operation of this pool, the pool took a short position in the market in this Fox Film A stock?

Mr. DODGE. No, sir.

Mr. PECORA. It did on a number of occasions, didn't it?

Mr. DODGE. I don't know.

Mr. PECORA. Now, Mr. Dodge, do you know how those profits of three million nine hundred and forty-one thousand and odd dollars were distributed among the various participants or members of the pool?

Mr. DODGE. Yes, sir.

Mr. PECORA. Were they distributed in the following amounts and proportions, respectively: Pynchon & Co., $1,117,382.09; Chase Securities Corporation, $798,130.07, representing 20.25 percent interest; West & Co., $638,504.05, representing a 16.20-percent interest; W. S. Hammons & Co., $638,504.05, representing a 16.20-percent interest; Eric & Drevers, $394,138.30, representing a 10-percent interest; yourself, $266,043.35, representing three quarters of 9 percent interest; W. F. Ingold, $88,681.12, representing one fourth of a 9-percent interest. Are these figures correct?

Mr. DODGE. Yes, sir.

Mr. PECORA. Now, out of the profit of $798,130.07 which accrued to Chase Securities Corporation as a participant in this pool, did it make a distribution of any portion thereof to the Shermar Corporation?

Mr. DODGE. Yes, sir; one 50 percent of it.

Mr. PECORA. It was 50 percent of it?

Mr. DODGE. Yes, sir.

Mr. PECORA. Are you sure that was a 50 percent interest which the Shermar Corporation had in Chase Securities Corporation participation in this pool?

Mr. DODGE. Yes, sir.

Mr. PECORA. How much did the Shermar Corporation actually receive in dollars and cents as its share of the profit from the Chase Securities Corporation?

Mr. DODGE. I understand, Mr. Pecora, that a part of the profits were paid over in cash, and a part were held by Pynchon & Co. as a margin against General Theatres Equipment common stock syndicate.

Mr. PECORA. That is, the Shermar Corporation had a trading account with Pynchon & Co.?

Mr. DODGE. No, sir.

Mr. PECORA. Did Mr. Wiggin have it?

Mr. DODGE. No, sir.

Mr. PECORA. Then how was it?

Mr. DODGE. The Shermar Corporation and Chase Securities Corporation—or Chase Securities Corporation had an interest in the General Theatres Equipment common stock 350,000 shares, and the Shermar Corporation also had a half interest in that interest, and I think both Chase Securities Corporation and the Shermar Corporation received in cash from Pynchon & Co. only a certain amount of those profits, and the balance was held by Pynchon & Co.——

Mr. PECORA (interposing). As a margin against General Theatres Equipment, Inc., stock, which Chase Securities Corporation and the Shermar Corporation were obligated to buy?

Mr. DODGE. As part payment; yes, sir.

Mr. PECORA. Now, this firm of Eric & Drevers, that you say participated in this pool, had among its members a man named Joseph Higgins, did it not?

Mr. DODGE. I do not know whether he was a member or not.

Mr. PECORA. Who is Joseph Higgins?

Mr. DODGE. I knew Mr. Higgins. He was a market operator.

Mr. PECORA. In his own name? I mean, was he in business for himself or as a member of a firm?

Mr. DODGE. I could not tell you that.

Mr. PECORA. Well, Mr. Higgins received a rather substantial payment of money, didn't he, out of the profits of this pool?

Mr. DODGE. I do not know, sir, but Eric & Drevers did. It was taken in the name of Eric & Drevers. How that was distributed I do not know.

Mr. PECORA. The firm of Eric & Drevers was a firm of brokers in New York, was it?

Mr. DODGE. I believe they were members of the stock exchange.

Mr. PECORA. Was Mr. Higgins a member of the stock exchange, or was he a market operator in his own individual account?

Mr. DODGE. I don't know.

Mr. PECORA. Isn't Higgins rather well known as a market operator or manipulator in the "Street"?

Mr. DODGE. I don't know whether he is well known or not as that.

Mr. PECORA. But you know him as a market operator, don't you?

Mr. DODGE. I knew of him as that.

Mr. PECORA. Did you know whether he had anything to do with the operations in the market of this pool account?

Mr. DODGE. Personally?

Mr. PECORA. Yes.

Mr. DODGE. I do not know exactly how to answer that question. I knew practically nothing about the operations of the account.

Mr. PECORA. Now, Mr. Dodge, I have before me a copy of a record from the files of the Chase Corporation, of the Composition Liquidating Corporation, which was liquidating Pynchon & Co. You know of that, don't you?

Mr. DODGE. Yes, sir.

Mr. PECORA. And this purports to show that there was paid the sums of $227,500 and $97,500 to Mr. Higgins, I mean to Mr. Joseph Higgins, out of the profits of this pool. And that is taken from the records of Pynchon & Co., who were the managers of the pool. Do you know anything about those payments?

Mr. DODGE. No, sir.

Mr. PECORA. Now, in this agreement of April 18, 1930, marked in evidence "Committee Exhibit No. 163", as of this date, and which constitutes the agreement among the members of this pool, there is a recital that the participants in the pool, in addition to being Pynchon & Co., Chase Securities Corporation, West & Co., W. S. Hammons & Co., and Eric & Drevers, is "Pynchon & Co. for others." Why in this agreement was that term used instead of the identity of yourself and Ingold being actually disclosed in the agreement?

Mr. DODGE. I was not willing to accept an interest in the account unless all the other members of the account agreed that it was

proper for me to do so, including Chase Securities Corporation. I don't think over the holiday that that agreement had been reached by all the members. In other words, that the members could be reached. And on the closing, that is, on the 18th, when all this 103 million dollars was paid, it was necessary that that extra 9 percent should be covered in some way, and Pynchon & Co. agreed to take the responsibility, and therefore took it for others.

Mr. PECORA. Did the others prove to be you and Ingold?

Mr. DODGE. After the final agreements were reached by the other members of the syndicate, why, then it was taken by myself and Mr. Ingold; yes, sir.

The CHAIRMAN. The subcommittee will now stand in recess until 2 o'clock p.m.

(Whereupon, at 1 p.m., Wednesday, Nov. 22, 1933, the subcommittee recessed until 2 p.m. the same day at the same place.)

AFTERNOON SESSION

(The subcommittee reconvened at the expiration of the recess at 2 p.m., Wednesday, Nov. 22, 1933.)

The CHAIRMAN. The committee will come to order. Proceed, Mr. Pecora.

Mr. PECORA. Mr. Chairman, I just want to recall Mr. Aldrich to the stand for one or two questions.

The CHAIRMAN. Mr. Aldrich has been sworn.

Mr. PECORA. Yes.

FURTHER TESTIMONY OF WINTHROP W. ALDRICH, PRESIDENT CHASE NATIONAL BANK

Mr. PECORA. Mr. Aldrich, did you cause to be prepared for the use and information of this committee a summary as of October 1, 1933, of the status of the interests of the Chase National Bank in Fox Film Corporation, General Theatres Equipment, Inc., and related companies?

Mr. ALDRICH. Yes; I did.

Mr. PECORA. Did you also cause to be prepared, for similar uses and purposes, a summary as of October 1, 1933, of the status of the interests of the Chase Securities Corporation, now the Chase Corporation, including Chase Harris, Forbes Corporation, in Fox Film Corporation and General Theatres Equipment, Inc., and related companies?

Mr. ALDRICH. Yes; I did.

Mr. PECORA. Did you also cause to be prepared, for similar uses and purposes, a recapitulation of the interests of the Chase National Bank and the Chase Securities Corporation in Fox Film and General Theatres Equipment, Inc., and related companies, as of October 1, 1933?

Mr. ALDRICH. Yes.

Mr. PECORA. I show you this document, and I ask you if it comprises the summaries and recapitulation that you have just been questioned about.

Mr. ALDRICH. Yes; it does.

Mr. Pecora. And you believe that that statement correctly reflects those interests as of October 1, 1933?

Mr. Aldrich. Yes; that is correct. I might say that these write-offs or reserves were taken several months ago, but they reflected conditions then.

Mr. Pecora. I offer in evidence the document identified by the witness.

The Chairman. Let it be admitted and entered in the record.

(The document referred to, summary of Chase interests in Fox Film, General Theatres Equipment, and related companies, was received in evidence, marked "Committee's Exhibit No. 164", Nov. 22, 1933, and the same will be found on page 3644.)

Mr. Aldrich. These write-offs and reserves that are shown on this statement were made last spring, and, of course, they have appeared in the statements of the bank and the Securities Co. ever since. They are part of the large write-offs.

Mr. Pecora. That is all, unless you want to make any statement at this time about this exhibit.

Mr. Aldrich. No; thank you.

TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. Pecora. Mr. Dodge, during the forenoon session today you gave some testimony of a very general character with respect to an issuance of $55,000,000 of 1-year notes which was made by Fox Film, Inc., to Halsey, Stuart & Co.

Mr. Dodge. Yes.

Mr. Pecora. Those $55,000,000 of notes fell due on April 15, 1931, did they not? You remember they were 1-year notes.

Mr. Dodge. They came due on that date, April 15.

Mr. Pecora. April 15, 1931?

Mr. Dodge. Yes, sir.

Mr. Pecora. Did the corporation meet the notes at maturity?

Mr. Dodge. Yes, sir.

Mr. Pecora. How was it done?

Mr. Dodge. The Fox Film Corporation sold, at 92 and accrued interest, $30,000,000 of principal amount, 5-year, 6-percent gold debentures, due April 1, 1936, to a group headed by Chase Securities Corporation, realizing a total amount of $27,665,000.

Mr. Pecora. Who were the other participants in that purchase group?

Mr. Dodge. Dillon, Read & Co.; Bancamerica-Blair Corporation; Harris, Forbes & Co.; Chatham-Phenix Corporation; Haystone Securities Corporation; Central Illinois Co., Chicago; and First National Old Colony Corporation, Boston.

Mr. Pecora. Prior to the issuance of these $30,000,000 of 5-year debentures, had there been any controversy between the Chase interests and Halsey, Stuart & Co. with respect to the future financing of Fox Film and Fox Theatres?

Mr. Dodge. Mr. Pecora, I do not think there was any controversy. The right to finance was vested in Halsey, Stuart & Co. through a preferential agreement with the company, and the fact that they had issued $55,000,000 of notes in the first instance.

Mr. PECORA. Will you please read the answer?

(The reporter read, as requested.)

Mr. PECORA. In the financing that took place on and after April 15, 1931, was that preferential right of Halsey, Stuart & Co. respected, or did the Chase interests become the sole bankers for the Fox Films and Fox Theatres?

Mr. DODGE. Not until Halsey, Stuart & Co. had finally decided to withdraw from the business.

Mr. PECORA. When did they reach that decision—about when?

Mr. DODGE. It was shortly before the 1st of April, I believe.

Mr. PECORA. Sometime in February 1931?

Mr. DODGE. I do not think as early as that.

Mr. PECORA. Will you see if you can find, among the records of the Chase Corporation available to you now, a memorandum addressed by you to Mr. Wiggin, under date of February 7, 1931, that relates to General Theatres Equipment, Fox Film, and Fox Theatres financing?

Mr. DODGE. To be sure, may I have the number?

Mr. PECORA. Yes. I meant to give you that. It is 65-57A.

Mr. DODGE. Yes, sir.

Mr. PECORA. Have you a copy of that?

Mr. DODGE. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic copy of such a memorandum. Will you look at it and tell me if it is a true and correct copy of a memorandum submitted by you on that date, February 7, 1931, to Mr. Wiggin?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(The document referred to, memorandum, Feb. 7, 1931, Dodge to Wiggin, was received in evidence, marked "Committee's Exhibit No. 165", Nov. 22, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The memorandum in question, received in evidence as committee's exhibit no. 165, reads as follows [reading]:

COMMITTEE EXHIBIT NO. 165

(Memorandum—Strictly confidential)

TO MR. WIGGIN: Despite everything we have tried to do, it seems that the Fox Company is liable to get into a disagreeable scrap with Harry Stuart. When he saw me a week ago Thursday, I told him that we would not countenance a change in management—we had confidence in Harley Clarke and felt that he had worked out many problems in the past year and should be given a chance to prove his ability to handle the situation. I stated that, as the banker for Fox Film Corporation, he should be perfectly frank in telling Harley Clarke if there was any lack of confidence in the management and have it out with him.

On Friday he did so, but evidently did not dare go as far as to suggest John Otterson for president, but did suggest him as a lieutenant, and I imagine Harley was very patient with him, and, while they had a very frank discussion, told him that the president of General Theaters had assumed the responsibility and must retain it and presumed that, if Halsey Stuart had lost confidence in the management, they would not wish to finance the company. Harry Stuart said no, that it was not an ultimatum and he would like to present a plan for financing. This plan involved the sale of $40,000,000 of Fox Film Debentures with warrants, secured by the assets and West Coast properties; the sale of

$20,000,000 of Notes, secured by the Loews stock, and the sale of $20,000,000 of Common Stock at 50, to the General Theatres Equipment, Inc., or 20 points above the market.

Harley pointed out that it was impossible for the General Theatres to invest in this stock—they had already put $50,000,000 into it as a cushion, which should be enough, and asked Harry Stuart if he would handle $50,000,000 of Debentures if he, Harley Clarke, got $30,000,000 on the Loews Stock. He said he would think it over, and Friday night, in a four-hour session, agreed to do this and also agreed to have a circular prepared and try to give him a definite answer Monday morning before the other bankers arrived from the West Coast. This was his attitude up until 3 o'clock on Sunday. Sunday, however, he dined with his brother and John Otterson, and Monday morning, at nine o'clock, called up and said that he was through with the Company's financing and, in his own terms, was willing to call it a day. Harley said that he presumed that he would not wish to embarrass him in any way as he would have to immediately take it up with other bankers, and Harry Stuart replied, no, that he did not wish to embarrass.

The Banks, Huntley group arrived from Los Angeles and we had considerable discussion with them. They felt that $10,000,000 West Coast bonds could be handled on the Coast and wanted assistance here. They wanted to talk to George Lindsay, of Bancamerica-Blair, to get their assistance with their Coast affiliates. We developed the fact that $15,000,000 was the minimum required and, at my instance, Harley called Harry Stuart and asked him to call Blair and tell them of his withdrawal and so release them from any commitment to the Halsey, Stuart group. Harry Stuart said that he would do this. He saw George Lindsay Thursday morning and at that time told him that he had not released the Fox Film Corporation from its preferential contract and therefore would not release the other bankers. He would only release the Fox Film Corporation from the contract after he had obtained what he thought was due him.

George reported this back to me and said that it put him in an embarrassing position, as he was unable to discuss any Fox Film business until he was released, and this would be true also of Dillon-Read and Lehman Brothers. Also it is a fact, and confirmed to me personally by Harry Stuart, that he had released Harley to discuss the West Coast financing with Banks-Huntley. Harley endeavored to get Harry Stuart that morning on the telephone up to the time Harry left on the Twentieth Century, but Harry would not talk to him, having his partner Nivers telephone his regrets after the train had left. He was with Otterson at lunch and going to the train.

That afternoon, with the assistance of Mudge, a letter was written to Harry Stuart, a copy of which I enclose. A wire was received from him this morning, copy of which is also enclosed.

Yesterday afternoon Harry Stuart went to Pynchon & Co.'s office and had a long talk with Jim Martin, the substance of which was that he did not trust Harley Clarke, that the Western Electric did not trust Harley Clarke, that there should be a change in management, and that he had talked with Albert Wiggin, who agreed with him, and that he had a contract to finance the company, and he would do so under the condition that the management be changed, and he would not release the company from their contract until this was done.

This was evidently intended to get back to Harley Clarke, but is disturbing in that he is preparing to say the same thing to everybody else, and, to use his own words, "I am prepared to fight." I have reason to believe that Otterson has also been talking along the same lines in New York. I have given you all this information so that you may see that we have done and are doing everything to prevent a fight, as the Lord knows this financing is difficult enough without being torpedoed by Harry Stuart. He is evidently bent on getting control of the management of the company through John Otterson, and will use the same methods that the two of them used against Fox to obtain their ends.

I am handling this matter in consultation with Aldrich, McCain, and Freeman, and will let you know if there are any developments, although I will not bother you with my troubles unless it is something that would definitely affect you and the whole situation. I will, of course, let it be known that I told Stuart, with authority, that The Chase is not in agreement with Halsey, Stuart, either in a change of management or in distrust of Harley Clarke.

Inasmuch as I do not believe that Halsey, Stuart & Co. could put out a $50,000,000 to $55,000,000 issue on Fox in this market, and I know that George Lindsey told Stuart that Blair would not be interested in such an attempt, I am pursuing a plan which I discussed with you, of endeavoring to put this financing down to $25,000,000 for Fox, and to do this we must raise $35,000,000 in the new company to own Loew's stock. Bloom has been helpful, and maintains that he can get the $25,000,000 three-year notes secured by the stock taken. I have had a conversation with Sam McRoberts, who unfortunately has gone away for a week, and while we all understand that the Chatham-Phenix could not do a job of this kind by themselves, I believe that there is a chance in this direction with Bloom's help. I am not, however, counting on it. We have made progress, however, by obtaining from Zukor, of Paramount, a statement that he will purchase the $10,000,000 three-year unsecured note of the new company as his contribution to help. They are discussing ways and means with Kuhn-Loeb today, and I expect to hear from them on Monday, in order to find out where the gravy is, if any. With Halsey Stuart out, it is possible for me to discuss the whole financing with Kuhn-Loeb again, a thing that I am loath to do unless necessary as the splitup of the gravy would hurt my feelings. I hope to make progress in this direction next week, and if we can get the $35,000,000 there is no question in our minds here that if properly priced and with ample warrants, a $25,000,000 issue on Fox would be duable.

Sorry to trouble you with all this, but think you should know it, as we are evidently heading into a great deal of very nasty resistance. It would be a very profitable and advantageous thing for Stuart and Otterson, now that they know that they will not have our backing in throwing Clarke out of Fox, to make this financing impossible and so obtain control of the Loew's stock and of that company for $55,000,000. Possibly I am oversuspicious, but all their actions so far have been in this direction.

(Signed) M. W. D.

FEBRUARY 7, 1931.

P.S.: Since writing the above Harley Clarke had a conversation with Harry Stuart on the telephone which was taken down by his secretary. We had just discussed this conversation with Mudge, who agrees that Stuart has certainly put himself in an unfortunate position, holding up and jeopardizing the company by insisting that he won't do the financing, and that practically will permit no one else to until he gets something out of it for himself, which is entirely extraneous to his banker's preference contract. I do not believe that the other three bankers will agree to remain tight until Stuart gets his.

This memorandum is going to be shown to no one and should be strictly confidential, as we do not want Stuart to know that we have a complete record of the conversation. The main point in this is that coupled with the telegram received this morning, it shows that he is not putting conditions on doing the financing, but putting conditions on releasing the company to do business with others on financing which he has refused to do, and given his conditions.

(Signed) M. W. D.

You, I suppose, among other things, were trying to convey to Mr. Wiggin in this memorandum that Halsey, Stuart & Co. were playing the dog-in-the-manger act; that they were not doing the financing and did not want anyone else to do it unless they got theirs?

Mr. DODGE. Yes, sir.

Mr. PECORA. What was the outcome of this situation, Mr. Dodge; the situation reflected by this memorandum of yours to Mr. Wiggin of February 7, 1931?

Mr. DODGE. As I remember it, Harry Stuart finally agreed to look into the matter again. The Chase Securities Corporation did not desire to see any break between Halsey, Stuart & Co. and the Fox Film Corporation. They had been their bankers and it would make it more difficult to do the financing if Halsey, Stuart withdrew. Negotiations continued with Halsey, Stuart and for such

time that the financing was really in jeopardy. The maturity was on April 15. This memorandum was written on February 7. It was only a little over 2 months——

Mr. PECORA. Let me interrupt you just for a moment—and I hope you will not lose the thread of your narrative. Let me ask you this: How were Halsey, Stuart at that time in a position to prevent the financing that was then contemplated being done by others than themselves?

Mr. DODGE. They had a preferential contract directly with the Fox Film Corporation in which they had the right to do any financing for the Fox Film Corporation in relation to the maturity of these 1-year notes. Whether it ran beyond that or not I do not remember. I think not.

Mr. PECORA. Did that preferential contract, so called, give them the right to dictate the terms of any new financing to take care of this $55,000,000 worth of maturities?

Mr. DODGE. I have not the preferential contract before me, but if it is in the usual form——

Mr. PECORA. Well, with your knowledge of the usual form of those contracts, did those contracts give bankers the right to dictate the terms of refinancing to a corporation?

Mr. DODGE. The company would probably have the right to form its own method of financing, and they would then have to submit it to Halsey, Stuart & Co.

Mr. PECORA. And if Halsey, Stuart & Co. did not want to accept the terms offered by the corporation, what, if anything, was the corporation then free to do under the preferential contract?

Mr. DODGE. They were free to discuss it with other bankers; but Halsey, Stuart & Co. always had a preferential right to take the securities on the same terms during a certain period that the other bankers were willing to take them. That would cause a delay, and other bankers would not care to submit or to agree to a plan or commitment when they knew that it was not a firm commitment on the part of the company.

Mr. PECORA. Will you continue your narrative from the point where I interrupted you by the question?

Mr. DODGE. At a certain date, I think I was saying, Halsey, Stuart & Co. finally decided to withdraw from the business entirely, and the financing was then definitely in the lapse of the Chase Securities Corporation. As I explained this morning, if the maturity had not been met it would have been disastrous for the stockholders of the Fox Film A stock, and as the General Theaters was one of the largest holders of that stock, it would have been disastrous for the General Theaters Corporation. We then had to work very fast to see if there was not some possible way of meeting this $55,000,000. What the date on which he finally decided to withdraw was, I do not remember.

Mr. PECORA. Some time between February 7 and April 15?

Mr. DODGE. I think we only had about 3 weeks.

Mr. PECORA. The plan that was evolved by the Chase interests that assumed the refinancing of the $55,000,000 of maturities included the issuance of $30,000,000 of 5-year debentures?

Mr. DODGE. Yes, sir.

Mr. PECORA. What other features of the refinancing plan were there?

Mr. DODGE. We would raise $27,665,000. The Fox Film Corporation sold 660,900 shares of common stock of Loew's to a company incorporated and known as the Film Securities Corporation and received therefor 462,000 shares of the class A stock of the Film Securities Corporation, and subject to some adjustment, the sum of $28,800,000. The maximum amount to be received then, or at least the amount to be received, was $56,465,000.

Mr. PECORA. You have told us that the $30,000,000 par amount of the 5-year debentures was sold by Fox Film to a group headed by the Chase Securities Corporation and which included as participants Dillon, Read & Co., Bancamerica-Blair, Harris-Forbes Co., Chatham-Phoenix Corporation, Keystone Securities Corporation, Sentinel Illinois Trust Co. of Chicago, and the Old Colony First National Corporation of Boston, and that the six hundred and sixty thousand and odd shares of Loew's, Inc., owned by Fox Films, were sold to a company called Film Securities Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was the Film Securities Corporation organized for the special purpose of taking over that stock of Loew's, Inc., from Fox Film?

Mr. DODGE. Yes, sir.

Mr. PECORA. Who caused it to be organized?

Mr. DODGE. The Chase Securities Corporation.

Mr. PECORA. Is Mr. Harley Clarke here?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Mr. Chairman, Mr. Clarke came in from Chicago to testify, and I want to put him on the stand now so I can get through with him and can resume with the examination of Mr. Dodge.

The CHAIRMAN. All right, Mr. Clarke. Please come around and take the stand. Mr. Clarke has been sworn, I believe?

Mr. PECORA. Yes, sir.

TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. ROGERS. Mr. Chairman, I would like leave of the committee to note my appearance as counsel for Mr. Clarke.

The CHAIRMAN. Please state your name.

Mr. ROGERS. Saul E. Rogers, attorney at law, 580 Fifth Avenue, New York City.

The CHAIRMAN. You appear as counsel for Mr. Clarke?

Mr. ROGERS. Yes, sir. And might I at this time present to the committee this statement of Mr. Clarke, with permission to have it read into the record [handing a paper to the Chairman]?

Mr. PECORA. Mr. Clarke, your counsel, Mr. Rogers, has just submitted to the committee a document that appears to be in the form of a letter addressed to me under date of November 22, 1933, and he has requested in your behalf that this letter be read into the record. The letter bears a signature reading "H. L. Clarke." Is that signature in your handwriting?

Mr. CLARKE. Yes, sir.

Mr. PECORA. I will offer it in evidence and read it.

(The letter referred to, dated November 22, 1933, to Ferdinand Pecora, from H. L. Clarke, was received in evidence, marked "Committee's Exhibit No. 166, November 22, 1933.")

Mr. PECORA. The letter marked "Exhibit 166" in evidence reads as follows (reading):

WASHINGTON, D.C., *November 22, 1933.*

FERDINAND PECORA, Esq.,
United States Senate Office Building,
Washington, D.C.

DEAR SIR: When testifying before the subcommittee of the Committee on Banking and Currency on November 17, I had prepared myself, insofar as it was possible without the benefit of corporate records, which were not in my possession, and to which I had not access, to testify with reference to company matters concerning General Theaters Equipment, Inc. and its subsidiaries.

The matter of the $100,000 claimed by Mr. Van Duyne was at all times, and still is, my personal obligation, if there be one. Reference to that transaction was entirely unexpected by me, and I endeavored to testify to that solely on the basis of my best recollection, without the benefit of any records to refresh my memory.

When I testified, as my first impression, that an escrow account had been established to provide for that contingency, I was sincere in the belief that that statement was accurate. I now find, to the best of my information, that I confused that situation with one of three other escrows that had been established, under escrow arrangements substantially as follows:

J. E. McAuley Manufacturing Co., deposit in the Continental & Commercial National Bank, August 1929	$150,000
The Strong Electric Corporation, deposit in the Continental & Commercial National Bank November 1929	75,000
Mitchell Camera Co., deposit in the Continental & Commercial National Bank, June 1929	100,000

I recalled that an escrow of $100,000 had been established in connection with the Mitchell Camera Co. purchase, and, inasmuch as the Van Duyne claim was in connection with that purchase, I assumed that the two items were identical.

When I stated that I always had at least $100,000 in my personal account available for payment to Van Duyne, if payment ever became necessary, that statement was likewise based on mere memory, without assistance of adequate records at the time of such testimony. I now discover, very much to my regret, that my recollection in that respect was faulty.

I am indeed sorry if thereby I have caused the subcommittee or yourself as counsel any inconvenience.

Yours very truly,

H. L. CLARKE.

Now, Mr. Clarke, you have heard me read this letter in full?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And before you signed this letter, had you read it?

Mr. CLARKE. I had; certainly.

Mr. PECORA. And understood fully its contents and meaning?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You say under oath that the statements embodied in this letter are each and every one of them the truth, the whole truth, and nothing but the truth with reference to the matters to which they relate?

Mr. CLARKE. Yes, sir; to the best of my knowledge and belief.

Mr. PECORA. Mr. Clarke, when you say in this letter which has been received in evidence as "Exhibit No. 166"—and I am reading from the letter now—that "The matter of the $100,000 claimed by Mr. Van Duyne was at all times, and still is, my personal obligation, if there be one", you mean that the General Theatres Equipment,

Inc., never had any interest, any liability for, or anything whatsoever to do with that obligation of $100,000 in favor of Van Duyne?

Mr. CLARKE. I do.

Mr. PECORA. How did you come to include that in the statement that you furnished to me and which has been received in evidence here as exhibit 135?

Mr. CLARKE. Mr. Pecora, that memorandum was furnished to Mr. Ross from the fragmentary record that I had of transactions. I had not access to the company's books, as the letter also states, and to the best of my knowledge and belief at the time the memorandum gave you the story of the acquisition of the various subsidiaries making up the General Theaters and the acquisition of the Fox Film. It was not intended, as I stated before, last week, to be an exact statement. Had I intended it to be such I certainly would have gone to the company's auditors to have them prepare one for me.

Mr. PECORA. In what other respects, if any, was this exhibit no. 135 in evidence wrong?

Mr. CLARKE. Is this the one [indicating]?

Mr. PECORA. Yes, sir.

Mr. CLARKE. I think in general the exhibit is correct as far as the totals are concerned and as far as prices for securities are concerned, but the allocation of items in two instances has been found faulty. But in no other respect have I found anything as yet that is faulty.

Mr. PECORA. What are those two allocations that you say are mistaken? Read them from the copy which you have of exhibit no. 135.

Mr. CLARKE. The one which I corrected on my second appearance here last week, in reference to the allocation of the cost of the equity in the building, allocating it to the Precision Machine Co. funds, when it should have been allocated to the funds of the Nicholas Power Co. The other error that I know of is the one that I have just corrected.

Mr. PECORA. That is, then, only with respect to this item of $100,000 that appears on the second page of exhibit no. 135 under the caption "Lamp Companies to Grandeur as commissions to H. E. Van Duyne"?

Mr. CLARKE. Yes, sir; that is the one I just referred to.

Mr. PECORA. In all other respects do you now say that the statements embodied in exhibit no. 135 in evidence are true and correct?

Mr. CLARKE. Yes, to the best of my knowledge and belief, from the records that we have.

Mr. PECORA. Do you recall that you testified last week when you appeared before this committee as a witness that William Fox had in some fashion or other some interest in the assets or property of the company called the Mitchell Camera Co. of California?

Mr. CLARKE. I recall that I testified that Mr. Fox had acquired an interest in the Grandeur Co., a one-half interest, and that he had claims against the Mitchell Camera Co.

Mr. PECORA. Do you recall that you testified in substance that Fox had acquired certain interests in property, including patent rights?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Of the Mitchell Camera Co.?

Mr. CLARKE. Yes; he claimed to have rights there because he had had the Grandeur camera manufactured at the Mitchell Camera Co.

Mr. PECORA. Didn't you purchase in your own name from the Mitchell Camera Co., or the individuals who owned the Mitchell Camera Co., all of the property and assets of the Mitchell Camera Co. of California?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And in connection with that transaction an agreement of sale was entered into, executed, between H. B. Boeger and George A. Mitchell, called the sellers, and yourself, called the buyer, of which Committee's Exhibit No. 143 in evidence is a true and correct copy? You remember you produced that exhibit itself last Friday?

Mr. CLARKE. Yes. [After examining exhibit.] Yes, sir.

Mr. PECORA. Have you a copy of it?

Mr. CLARKE. No; I have not. That is why I read it. I did not have time before I gave it to you last week.

Mr. PECORA. Now look at that exhibit carefully, Mr. Clarke, and if you want to have the benefit of the advice of your counsel about its contents you may have it, and after doing so point out to this committee any provision in that agreement that relates to any interest William Fox had or ever had prior to the date of that agreement or at any other time in the Mitchell Camera Co. of California, or any claim that he ever had against that company.

Mr. CLARKE. I feel quite sure without looking at it I will not find any, but I shall be glad to read it over line by line. I am very certain there is nothing contained in it. [After examining document.] I find nothing in it that says he had any interest.

Mr. PECORA. What evidence can you give this committee relating to any interest or claims that William Fox had either in the Mitchell Camera Co. or any of its property or assets or against the company or any of its constituents for which, according to your statement known as "Exhibit No. 135", you paid him $2,000,000.

Mr. CLARKE. Mr. Fox claimed that he had spent several million dollars in the development of Grandeur in his own laboratory. He had his engineers out at the Mitchell Camera Co. for some time directing the manufacture of a special camera. We had also been working on plans for this type of camera. By "we" I mean the International Projector Corporation. Mr. Fox had been negotiating for the purchase of the Mitchell Camera Co. He also claimed, I am told, and since I have been told my memory is refreshed and I can state it as a fact, that he had an interest in some of these lamp companies which were purchased and that he ought to have had a right to buy them. Not much credence was given to that, but a great deal was given to the value of the Grandeur situation.

Mr. PECORA. You have testified before this committee and you have also embodied in the exhibit marked in evidence as "Exhibit No. 135" the statement that the General Theatres Equipment, Inc., bought from you all the stock of the McAuley, Strong Electric, the Ashcraft, and the Hall & Connolly Cos. for $3,000,000 in cash, and the Grandeur, Inc., bought from you stock of the Mitchell Camera Co. that you had acquired for $3,100,000 cash, haven't you?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Is that testimony true?

Mr. CLARKE. Yes, I believe it is. It was set up on the books that way and the money was given to Mr. Fox, $2,000,000 for his payment to Grandeur Co. for the half interest. The total amounts paid out here check out. As I told you before, I do not know why the auditors set it up on the books that way.

Mr. PECORA. No matter why the auditors set it up on the books that way, you did receive from the General Theatre Equipment, Inc., cash aggregating $6,100,000 for your interest in the stock and assets of the four lamp companies known commonly as the McAuley, Strong Electric, the Ashcraft, and Hall & Connolly, and your interest in the stock, assets and property of the Mitchell Camera Co.?

Mr. CLARKE. That is correct, although I think the testimony was the assets, not the stock and assets.

Mr. PECORA. Well, all right. Is that testimony true?

Mr. CLARKE. Yes, sir; it is substantially correct.

Mr. PECORA. You have also testified that the General Theatres Equipment, Inc., on paying you this aggregate sum of $6,100,000 in cash, paid you that sum because that sum was the amount that you had expended and paid for the property, assets, of those four lamp companies and of the Mitchell Camera Co. Do you recall that testimony?

Mr. CLARKE. Yes, and the half of Grandeur.

Mr. PECORA. What is that?

Mr. CLARKE. And the payment to Mr. Fox for the one-half interest in Grandeur.

Mr. PECORA. How much did the assets of the four lamp companies and of the Mitchell Camera Co. cost you, Mr. Clarke, actually, and if you have itemized them as among those five concerns, please do it?

Mr. CLARKE. There is a further statement here—

J. E. McAuley Manufacturing Co., $1,131,422.93; the Strong Electric Co., $316,000; the Ashcraft Automatic Arc Co., $150,000; the Hall & Connolly, Inc., $160,000; the Mitchell Camera Co., $1,475,000.

Mr. PECORA. Making a total of those five items of how much?

Mr. CLARKE. Of $3,232,422.93.

Mr. PECORA. In this exhibit 135 in evidence you have stated that in August 1929 General Theaters Equipment bought from you all stock of McAuley, Strong Electric, Ashcraft, and Hall & Connolly for $3,000,000 cash, have you not?

Mr. CLARKE. That is the first statement.

Mr. PECORA. Is that a correct statement?

Mr. CLARKE. That is a correct statement, yes.

Mr. PECORA. It is?

Mr. CLARKE. Yes.

Mr. PECORA. And is it also a truthful and correct statement to say that the stock of McAuley, Strong Electric, Ashcraft, and Hall & Connolly, for which you received 3 million dollars in cash from the General Theatres Equipment, had cost you that sum of $3,000,000 in the aggregate?

Mr. CLARKE. Yes; I just testified to the fact that the payment was $3,232,422.93.

Mr. PECORA. But that excluded $1,475,000 representing the cost to you of the assets of the Mitchell Camera Co.?

Mr. CLARKE. Yes. Didn't you just include that in your statement.
Mr. PECORA. No.
Mr. CLARKE. I beg your pardon.
Mr. PECORA. What did the stock or assets of the McAuley Co., Strong Electric Co., the Ashcraft Co., and the Hall & Connolly Co. cost you when you acquired them as the agent or representative of the General Theaters Equipment, Inc.?
Mr. CLARKE (after calculating on pad). $1,757,422.93.
Mr. PECORA. Did you represent to the General Theaters Equipment, Inc., that that stock of those properties of those four companies had cost you that sum that you have just given us, or did you represent to it that they cost you 3 million dollars?
Mr. CLARKE. No. I made no representation other than what they cost me at any time.
Mr. PECORA. And the cost was this figure of one million seven hundred and odd thousand dollars that you have just given us?
Mr. CLARKE. Yes, sir; that is to the best of my recollection.
Mr. PECORA. Then why did you get from the General Theaters Equipment the sum of 3 million dollars in cash for those assets that cost you over one million three hundred odd thousand dollars?
Mr. CLARKE. I have already testified last week and just now that I do not know why it was set up that way. The total of the items paid out here amount to $6,100,000, and I find that they probably amount to more than that, although I am in no position to verify it at the moment; and that includes the 2 million paid to Mr. Fox and the $750,000 paid for stock, large items, and it also includes the $100,000 which was not paid out.
Mr. PECORA. You prepared this statement, exhibit no. 135, from data or recollection or information that you had at the time you caused it to be prepared, did you not?
Mr. CLARKE. Yes. Mr. Keller prepared it for me.
Mr. PECORA. Now will you be good enough to explain to me—maybe you think you have already done it, but if you have I have not been able to understand it—will you be good enough to explain what this $2,000,000 was given to William Fox for and what the $750,000 of stock of the General Theaters Equipment was given to William Fox for?
Mr. CLARKE. The $2,000,000 item and the $750,000 item, making a total of $2,750,000, was paid to Mr. Fox for all his claims of every kind and nature in connection with the development of the wide film known as Grandeur and whatever development he had made in such cameras and any other apparatus that went along with it.
Mr. PECORA. Did he transfer those claims of his to General Theatres Equipment, Inc., for that $2,750,000 consideration?
Mr. CLARKE. To the best of my recollection he must have when he made the payment.
Mr. PECORA. Did he?
Mr. CLARKE. I say to the best of my recollection. Mr. Fox claimed that he had paid out several million dollars in this development.
Mr. PECORA. Did he transfer to any written instrument those claims for which he received this purchase price or consideration of $2,750,000 representing both cash and stock of the General Theaters Equipment, Inc.?

Mr. CLARKE. I assume that the company has some written documents regarding it. I haven't them myself.

Mr. PECORA. Have you any recollection of its having done so?

Mr. CLARKE. I haven't any recollection of any specific document; no, sir.

Mr. PECORA. Have you any recollection of his ever submitting to you any documentary proof to support those claims for which, according to your testimony, he received in cash and in stock the equivalent of $2,750,000?

Mr. CLARKE. At the same time we acquired this interest and claims of Mr. Fox you recall that a contract was entered into to supply the entire chain of theaters that Mr. Fox had with this equipment.

Mr. PECORA. Oh, now you are talking about something else entirely, Mr. Clarke. You are not answering my question. Now, Mr. Reporter, will you be good enough to repeat the question to Mr. Clarke?

The REPORTER (reading):

> Have you any recollection of his ever submitting to you any documentary proof to support those claims for which, according to your testimony, he received in cash and in stock the equivalent of $2,750,000?

Mr. CLARKE. No; I have not.

Mr. PECORA. Did you ever see any documentary evidence supporting Mr. Fox's claims in that respect?

Mr. CLARKE. Not that I recall.

Mr. PECORA. Why did you sanction, as the president of the General Theatres Equipment Co. as well as one of its directors, the payment to Fox of $2,750,000 in cash and stock combined for those claims?

Mr. CLARKE. Because we thought we had made an advantageous deal.

Mr. PECORA. You, as president and a director of the General Theaters Equipment, Inc., paid or caused that company to pay to Fox the equivalent of $2,750,000 for claims, no documentary proof of which had ever been submitted to you?

Mr. CLARKE. We did authorize the payment of $2,750,000; yes, sir.

Mr. PECORA. For claims no documentary proof of which had ever been submitted to you by Fox or anybody else?

Mr. CLARKE. I said I do not recall of any documentary evidence about it.

Mr. PECORA. Were these claims advanced by Fox himself to you as the president and director of General Theatres Equipment, Inc.?

Mr. CLARKE. Yes; and it was general knowledge in the industry and with all our people that Mr. Fox was working on this development and had been working on it for some time.

Mr. PECORA. Let us leave general knowledge of others out of the situation here and let us just confine ourselves to your knowledge, and I think you will do better if you will just speak for yourself. Now, Mr. Clarke, when were these claims of Mr. Fox submitted to the General Theatres Equipment, Inc.?

Mr. CLARKE. Mr. Fox made these claims when he knew that we were negotiating for the Mitchell Camera Co.

Mr. PECORA. When was that?

Mr. CLARKE. Some time prior to the time that we acquired it. several months, and I believe that was acquired in August 1929.

Mr. PECORA. By whom? You acquired them——

Mr. CLARKE. By the General Theatres.

Mr. PECORA. Now, as a matter of fact, you acquired the claims and property of the Mitchell Camera Co. by agreement dated June 6. 1929, didn't you?

Mr. CLARKE. That is correct.

Mr. PECORA. When did Fox make known to you that he had these claims for which he eventually received $2,750,000 in cash or stock of the General Theatres Equipment?

Mr. CLARKE. At the time he found that we were negotiating for the purchase of the Mitchell Camera Co.

Mr. PECORA. Well, the negotiations for the purchase of Mitchell Camera Co.——

Mr. CLARKE (interposing). Were prior to that date.

Mr. PECORA (continuing). Were concluded by you on the 6th of June 1929, were they not?

Mr. CLARKE. Yes, sir. Prior to that date.

Mr. PECORA. Prior to that date Fox made known to you the claims that he had?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Did he make them known to you orally?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Did he ever make them known to you in any other fashion or manner than by oral means; that is to say, by word of mouth?

Mr. CLARKE. Not that I recall.

Mr. PECORA. Now, in what form specifically, to your knowledge, did Fox receive this $2,000,000 in cash?

Mr. CLARKE. In the form of a certified check.

Mr. PECORA. Whose check was it?

Mr. CLARKE. Mine.

Mr. PECORA. Your check?

Mr. CLARKE. Yes.

Mr. PECORA. Drawn on your individual account?

Mr. CLARKE. Chase Bank; yes, sir.

Mr. PECORA. Can you produce the voucher?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Have you it with you?

Mr. CLARKE. I have not.

Mr. PECORA. Do you remember the date of that check?

Mr. CLARKE. I gave you the dates last week. [After consulting with associates.] The payment was in two checks.

Mr. PECORA. Give me the respective dates and amount of the checks.

Mr. CLARKE. August 1, 1929, $1,625,000, and August 1, 1929, $375,000.

Mr. PECORA. Did you have any legal adviser aiding you and representing you in this transaction with Fox under which you gave him these two certified checks for an aggregate amount of $2,000,000?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Who was it?

Mr. CLARKE. Mr. Koegel.

Mr. PECORA. That is Mr. O. E. Koegel?

Mr. CLARKE. Mr. O. E. Koegel, that is correct.

Mr. PECORA. Was he present when the checks were passed over to Mr. Fox?

Mr. CLARKE. I do not recall that.

Mr. PECORA. Did he advise you in words or substance to give Mr. Fox this 2 million dollars without receiving any written agreement or evidences from Mr. Fox of his assignment of those claims for which you paid him that 2 million dollars?

Mr. CLARKE. I do not recall that, but I recall many conversations which Mr. Koegel had with me in the organization in reference to the purchase of these claims of Mr. Fox.

Mr. PECORA. With what men in the organization did you confer before you made this payment to Mr. Fox, on the subject of the acquisition of these claims from Mr. Fox for that consideration?

Mr. CLARKE. I discussed the matter with Mr. W. C. Michel, Mr. Walter E. Green, and also many of the mechanics of the organization who knew of the value of the equipment that was being made for Mr. Fox at the Mitchell Camera, or assumed they knew the value.

Mr. PECORA. Now, how did Mr. Fox describe these claims to you orally that induced you to buy them for $2,750,000 in cash and stock?

Mr. CLARKE. Well, Mr. Fox represented that he had spent several million dollars personally in the development of this Grandeur process, and to my own knowledge he had spent a great deal of money. I had no definite knowledge that it was several millions. But I did have definite knowledge, without his telling me, that he had been very active for some time in the development of this Grandeur situation, and Mr. Fox at that time owned or controlled a large number of theaters in this country and abroad, and I felt that some one had to take the lead in putting this equipment in theaters or it would not be done. Mr. Fox not only had done this for himself and the benefit of his theaters, but if we acquired it we would reap the benefits of what he had done, and as well get a contract which would enable us to make a considerable amount of money for the International Projector Corporation.

Mr. PECORA. Well, did you pay him this $2,750,000 for those claims, or for something other than those claims?

Mr. CLARKE. All the claims that he had.

Mr. PECORA. All right.

Mr. CLARKE. And he also claimed a right to buy the Mitchell Camera Co.

Mr. PECORA. Well, you knew you had bought those rights and received a bill of sale in writing from the owners of the Mitchell Camera Co. on the 6th of June 1929, did you not?

Mr. CLARKE. Yes.

Mr. PECORA. You knew that when you paid Fox this money on the 1st of August 1929?

Mr. CLARKE. Yes, sir. We did not own any of the rights to the special apparatus that Mr. Fox had had made there, by acquiring the Mitchell Camera.

Mr. PECORA. How did you get any such rights at any time from Fox?

Mr. CLARKE. I have already testified that I do not recall any documents, but I assume that some document was executed.

Mr. PECORA. Now you were aware, were you not, when you claimed to have paid Fox these two checks aggregating $2,000,000 on the 1st of August 1929 that the agreement which was really the bill of sale to you of the property and assets of every kind of the Mitchell Camera Co., of California, contained this clause, among others, known as clause 2:

The sellers hereby represent and warrant that the corporation now owns or will acquire all letters patent under which it manufactures its products, said patents to be included in the assets to be sold to the buyer.

You knew that, did you not?

Mr. CLARKE. Certainly.

Mr. PECORA. How?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Did you also know at that time, on August 1, 1929, that this agreement or bill of sale also contained the following statement:

Sellers agree to sell or cause to be sold, and the buyer agrees to purchase or cause to be purchased, as hereinafter provided, all of the property, business, and assets of every kind and nature of the Mitchell Camera Co., a California corporation, hereinafter sometimes referred to as the corporation, including in such property, business and assets, furniture, fixtures, jigs, dies, tools, patents, machinery, merchandise on hand, claims, insurance, securities, choses in action, contracts, agreements, leases, leasehold interests, licenses, trade marks, trade names, trade rights, brands, patents, applications for patents, patent rights, also all cash and accounts receivable, received by or becoming due to the corporation after June 30, 1929.

Mr. CLARKE. Yes, sir. I just read it a few minutes ago.

Mr. PECORA. Now I take it that this agreement between you and the owners of the Mitchell Camera Co., which is marked as "Exhibit No. 143" in evidence here, was prepared by your lawyer, Mr. Koegel, was it not?

Mr. CLARKE. I assume it was, but I do not know.

Mr. PECORA. You have referred in your statement, marked in evidence here as "Exhibit No. 135", to a repurchase agreement in connection with the giving by you to William Fox of 25,000 shares of General Theatres Equipment, Inc., as part of the consideration for these so-called "claims"?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Was there such a repurchase agreement in writing?

Mr. CLARKE. Yes, sir; I think so.

Mr. PECORA. Have you a copy of it?

Mr. CLARKE. I am informed that there is no written document in evidence. That Mr. Fox had it put to me at $30 a share for this stock, which he did, and he was given the $750,000.

Mr. PECORA. When did he get that $750,000 in lieu of the stock?

Mr. CLARKE. It was a couple of months or so after August. I do not know the date. I do not have the date.

Mr. PECORA. Who paid him that $750,000?

Mr. CLARKE. I did.

Mr. PECORA. You?

Mr. CLARKE. H. L. Clarke.

Mr. PECORA. Out of your individual or personal means?

Mr. CLARKE. Yes.

Mr. PECORA. The payment was not made by the General Theatres, Inc., at all?

Mr. CLARKE. No, sir.

Mr. PECORA. Well, why did you make him that payment?

Mr. CLARKE. Because I had agreed to.

Mr. PECORA. What was the basis of the agreement? The consideration for the agreement? These claims?

Mr. CLARKE. The consideration in the first instance was this stock and part of the payment of his claims. And the agreement was given to him at the same time to repurchase it.

Mr. PECORA. Was that repurchase agreement an oral agreement?

Mr. CLARKE. They tell me they do not find any letter. My best recollection is that there was, but in the absence of producing it I now say that I do not recall.

Mr. PECORA. Do you recall for how long a period of time that agreement, whether written or oral, was in effect?

Mr. CLARKE. I do not.

Mr. PECORA. Do you recall the substance of the agreement? The terms and provisions generally?

Mr. CLARKE. Well, the agreement was that any time during this period—whatever the period was—Mr. Fox could call upon me to pay the $30 a share for this stock and I would have to do it. He did call on me and I paid it.

Mr. PECORA. And he delivered to you the 25,000 shares of stock, did he?

Mr. CLARKE. He delivered it; yes.

Mr. PECORA. Did he make his demand that you repurchase this stock from him in writing? Did he send you any written notice of his election to avail himself of the benefits of that repurchase agreement, and did he make that election in writing to you?

Mr. CLARKE. He made it in writing by means of the telegram and a telephone conversation.

Mr. PECORA. Can you produce that telegram or not?

Mr. CLARKE. I do not know whether I can, but I can produce the date of it, because I paid for it the next day—the following morning.

Mr. PECORA. Do you recall the circumstances under which you individually turned over to Grandeur, Inc., or rather turned over to the Mitchell Camera Corporation of Delaware, the assets of the Mitchell Camera Co. of California for $3,100,000?

Mr. CLARKE. No; I do not. I think that was merely a matter of allocation of values worked out by the auditors.

Mr. PECORA. Well, now, I understand that that transaction between the Mitchell Camera Corporation of Delaware as the buyer and the Mitchell Camera Co. of California as the seller, or rather you as the seller of the assets of the Mitchell Camera Co. of California, took place on July 12, 1929?

Mr. CLARKE. How was that?

Mr. PECORA. Does that accord with your recollection?

Mr. CLARKE. I have no recollection of it.

Mr. PECORA. My information further is, Mr. Clarke, that in that transaction the purchase price at $3,100,000 was allocated in the following way: The net worth of the assets of the Mitchell Camera Co. of California was stated to be $294,842.41, and the good will

$2,805,157.59, which figures make the total of $3,100,000. Do you recall that?

Mr. CLARKE. No; but I should be glad to look at that, if I may.

Mr. PECORA. What was that?

Mr. CLARKE. May I see that paper?

Mr. PECORA. May you see this paper that I hold in my hand?

Mr. CLARKE. Yes. I should like to find out how that is made up.

Mr. PECORA. I am sorry, but this communication, this document which I hold in my hand and from which I have taken the figures I have embodied in my last question, is in the nature of a confidential communication to me.

Mr. CLARKE. Well, I did not want to be impertinent, but I thought I might throw some light on the $3,100,000 that you are speaking about.

Mr. PECORA. Well, apparently this refers to that. Do you recall anything about the $2,805,157.59 placed on the goodwill of the Mitchell Camera Co. of California at any time?

Mr. CLARKE. I think I do. I think that was the value put on the goodwill by the auditors in setting up the values in order to check out what was paid out, and to allocate the values to Grandeur, Inc. I say I think it was, and I am sorry I cannot see the document.

Mr. PECORA. Well, now, Mr. Clarke, in the agreement of the 6th of June, 1929, marked, "Committee Exhibit No. 143" in evidence, haven't you already observed from what I have read to you as excerpts from this exhibit, that in addition to getting all of the property and assets of the Mitchell Camera Co. of California, you also got the goodwill, the business of the company, including the right to use the name of the Mitchell Camera Co., or a similar name, and so forth?

Mr. CLARKE. Yes, sir; of course.

Mr. PECORA. You got all that goodwill, property, assets of every kind and nature for $1,475,000 on the 6th of June, 1929, and then on the 12th of July, 1929, they were turned in to the Mitchell Camera Corporation at $3,100,000, which included the allocation of goodwill alone at $2,805,157.59. How do you explain that, Mr. Clarke—if you can?

Mr. CLARKE. I cannot explain it. I will assume that that is correct if you have information to that effect.

Mr. PECORA. I think you may safely assume it is correct. And you cannot explain it?

Mr. CLARKE. Any further than I have explained it several times, that the value was purely arbitrary, that the $3,100,000 was purely arbitrary, and set up on the books that way.

Mr. PECORA. But it was marked up from the $1,475,000 which you actually paid for the good will and all of the property, assets of every kind and nature whatsoever, to $3,100,000 when the Mitchell Camera Corporation of Delaware took over those assets as the creator of General Theatres Equipment, Inc.

Mr. CLARKE. Well, all the assets and all the goodwill and property of the Mitchell Camera Co. were acquired, and also were acquired the claims of Mr. Fox for 2 million——

Mr. PECORA (interposing). And which were never reduced to writing, and as to which no written evidence of the existence of which, or in support of which, had ever been submitted.

Mr. CLARKE. How is that?

Mr. PECORA. Had ever been submitted to you or anybody else so far as I know. Is that correct?

Mr. CLARKE. That is correct. I was trying to explain as nearly as I could, as to the information you have given me, how this came to be set up in that way. There was an allocation of value for those claims put into Grandeur, apparently. And that is how that amount was arrived at.

Mr. PECORA. Do you know Mr. Marvin?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Is he connected with Grandeur, Inc.?

Mr. CLARKE. No, sir. He is an auditor.

Mr. PECORA. He is an auditor?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Did he ever do any auditing for Grandeur, Inc.?

Mr. CLARKE. I believe he did.

Mr. PECORA. Did he at the time of the acquisition of those assets of the Mitchell Camera Co. for $3,100,000, do any auditing?

Mr. CLARKE. Yes. I assume that he or his men caused that set-up to be made.

Mr. PECORA. Do you know Mr. Wiegand?

Mr. CLARKE. He is an auditor, and——

Mr. PECORA (interposing). Mr. Marvin and Mr. Wiegand are auditors?

Mr. CLARKE. Yes, sir. Both of them were with F. W. Lafrentz & Co.

Mr. PECORA. It may be of interest to you that among the confidential information I have received through the medium of the document I hold in my hand and which I held when I questioned you, is the following:

> Neither Mr. Marvin nor Mr. Wiegand could tell what amount you paid for the assets of the capital stock of the Mitchell Camera Co. of California, as they claimed that that is a part of your personal recollection, and they have no knowledge of such transaction.

Does that surprise you?

Mr. CLARKE. I do not think they ever had the contracts in their possession, except at the time the deal was made, and the contracts were checked for the entries on the books.

Mr. PECORA. Didn't you give them any information that enabled them to set up the books?

Mr. CLARKE. Certainly. My people gave them information in regard to all of these transactions.

Mr. PECORA. Then how do you account for their claim that they have no knowledge of the transaction, that is, any of the details of it, which would include the cost to you of the assets or capital stock of the Mitchell Camera Co. of California?

Mr. CLARKE. Well, Mr. Pecora, I cannot tell you why. What they have said to you I do not know.

The CHAIRMAN. Do I understand that a proper showing to be on the books that instead of $2,000,000 for good will there should be $2,000,000 to Fox?

Mr. CLARKE. Well, it is on the books indirectly because it was paid to Fox to acquire half of Grandeur, Senator, and I paid him in two checks as I have testified.

The CHAIRMAN. I understand that you paid it to Fox. But in the valuation of the property you put in 2 million dollars as goodwill, whereas as I understand your testimony that 2 million dollars represented what you paid to Fox for his claims.

Mr. CLARKE. I think the goodwill simply set up the value to the Grandeur, Inc., which at first was largely good will, and it was development.

Mr. PECORA. What protection consisting of any documentary evidence binding William Fox, has General Theatres Equipment, Inc., or Grandeur, Inc., against any claim that Fox might make that he never transferred those claims?

Mr. CLARKE. I have testified to you I don't know what documents Grandeur, Inc., had at the time, but I assume they must have had something.

Mr. PECORA. How could you find that out?

Mr. CLARKE. I think we can find out through the company, and through Mr. Koegel, and through Mr. Fox, and through everybody the whole details of the transaction.

Mr. PECORA. But you cannot give us any more details than you have given us?

Mr. CLARKE. No; I am doing the best I can.

Mr. PECORA. Mr. Fox is expected to be here under subpena tomorrow. I would suggest that you attend the hearing and hear his testimony.

Mr. CLARKE. I will be very glad to do so. He is always entertaining. [Laughter.]

Mr. PECORA. I do not think he is coming to provide any entertainment for you or anyone else, Mr. Clarke.

Mr. CLARKE. Probably not.

Mr. PECORA. He is coming down on serious business, to testify to actual facts; at least I hope he is.

Mr. CLARKE. All right.

Mr. PECORA. Mr. Clarke, let me suggest to you that you get in touch with Mr. Koegel or any other gentlemen you think can give you any information by way of documentary evidence or otherwise, or with anybody that will throw any light additional to that which you have attempted to throw on the acquisition of these claims of Mr. Fox for 2¾ million dollars. Will you do that?

Mr. CLARKE. I shall be very glad to give you anything I can procure.

Mr. PECORA. Can you do that by tomorrow?

Mr. CLARKE. I will try.

Mr. PECORA. All right. You can get it.

Mr. CLARKE. These people are in New York.

Mr. PECORA. What is that?

Mr. CLARKE. Mr. Koegel is in New York.

Mr. PECORA. But you can get in touch with Mr. Koegel, and have him down here?

Mr. CLARKE. We can get him on the phone.

Mr. PECORA. All right. Now, Mr. Clarke, I want to go back to something else: You were the president of General Theatres Equipment, Inc., in April of 1930, were you not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And also a member of the board of directors?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Do you recall that on or about April 28, 1930, Fox Film Corporation issued 55 million dollars par value of 1-year gold notes, due April 15, 1931, bearing 6 percent interest?

Mr. CLARKE. I recall that.

Mr. PECORA. And General Theatres Equipment, Inc., at that time had the controlling interest in the Fox Film Corporation, through the acquisition of its capital stock in this transaction with William Fox, that took place on or about April 7, 1930, did it not?

Mr. CLARKE. It did.

Mr. PECORA. Now, Mr. Clarke, are you familiar with that issuance of 55 million dollars worth of 1-year notes by the Fox Film Corporation?

Mr. CLARKE. In a general way, yes.

Mr. PECORA. Those notes were issued to Halsey, Stuart & Co. who up to that time had been the bankers for the Fox Film interests, had they not?

Mr. CLARKE. Halsey, Stuart & Co. bought the issue.

Mr. PECORA. They bought the issue of notes?

Mr. CLARKE. Yes.

Mr. PECORA. At a price of 92, was it? Or 97¾, I believe.

Mr. CLARKE. To the best of my recollection that price is correct.

Mr. PECORA. Now, did you have anything to do with that transaction?

Mr. CLARKE. Yes, sir.

Mr. PECORA. What did you have to do with it?

Mr. CLARKE. Well, as the president of General Theatres Equipment I sold the issue to them through Fox because I had become the president of the Fox Co. in the meantime.

Mr. PECORA. That is to say, on and after the acquisition of the stock of the Fox Film Co. by General Theatres Equipment you became the president of the Fox Film Co.?

Mr. CLARKE. I did.

Mr. PECORA. Now, accompanying those $55,000,000 1-year notes were there any warrants?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Entitling the holders of the notes to buy common stock of Fox Film at a preferential price?

Mr. CLARKE. At a fixed price. There was no preferential agreement.

Mr. PECORA. Well, at a fixed price, and I did not mean necessarily a preferential price. And the fixed price was $35 a share, wasn't it

Mr. CLARKE (turning to his associates)——

Mr. PECORA. Wasn't it, Mr. Clarke?

Mr. CLARKE. You are saying, as I understand it, Mr. Pecora, tha accompanying the $55,000,000 issue of 1-year notes, there were war rants given for the purchase of Fox A stock. Is that correct?

Mr. PECORA. Yes; of Fox Film class stock at $35 a share.

Mr. CLARKE. I will have to consult somebody as to that price. I haven't refreshed my memory on it. [Inquiring of an associate.] They tell me that that is correct, that $35 was the price.

Mr. PECORA. How many of those stock-purchase warrants were issued at the time of the issuance of those $55,000,000 of debenture 1-year notes—300,000, weren't there?

Mr. CLARKE. I will inquire. [Inquiring of an associate.] I think that is correct. I would like to get the circular.

Mr. PECORA. And the right to purchase common stock under those warrants at $35 a share, expired on April 15, 1933, did it not?

Mr. CLARKE. Yes; that was the date of it.

Mr. PECORA. Now, why were those 300,000 stock-purchase warrants issued to Halsey, Stuart & Co. at that time?

Mr. CLARKE. Well, it was a part of the trade, Mr. Pecora.

Mr. PECORA. A part of the trade whereby they bought the $55,000,000 par value of debentures at 97¾?

Mr. CLARKE. Yes.

Mr. PECORA. What was the market quotation or the market value of Fox Film A stock at that time—I mean in April of 1930, when those purchase warrants were so issued?

Mr. CLARKE. I do not recall.

Mr. PECORA. Well, something in excess of $35 a share, wasn't it?

Mr. CLARKE. From $35 to $40 a share; yes, sir.

Mr. PECORA. Wasn't it substantially in excess of $35 a share?

Mr. CLARKE. My best recollection is that the stock fluctuated a considerable amount at that period.

Mr. PECORA. Mr. Clarke, would you say that those warrants to purchase the class A stock of the Fox Film Co. were given to the bankers, Halsey, Stuart & Co., as an additional gravy, so-called? You know, that term has come into pretty good use today through the employment of it by Mr. Dodge, formerly a vice president of the Chase Securities Corporation.

Mr. CLARKE. Well, I would say it was a part of the consideration; yes.

Mr. PECORA. Did Halsey, Stuart & Co. hold those 300,000 stock purchase warrants, or do you know?

Mr. CLARKE. I do not know.

Mr. PECORA. Do you recall that sometime after the issuance of those stock purchase warrants General Theatres Equipment bought 70,000 of those warrants back and paid $1,600,000 for them to the bankers?

Mr. CLARKE. Yes, I do.

Mr. PECORA. When did that take place?

Mr. CLARKE. We haven't any record of that here. I recollect it myself from memory, that we did pay out $1,600,000, or something like that, for them.

Mr. PECORA. For 70,000 of those 300,000 stock purchase warrants?

Mr. CLARKE. Yes. But if I may do it, and I do not want to appear too dumb, I haven't the records of the company before me, and haven't them available, while other people have had the records before them, and I have not.

Mr. PECORA. Perhaps if the gentlemen who have the minute books of General Theatres Equipment, Inc., for the month of May 1931

will be kind enough to make them available to the witness, he can answer these questions according to the corporate records.

Mr. CLARKE. All right, if they will.

Mr. PECORA. Incidentally, while we wait for the production of those minute books, let me tell you that according to an exhibit placed in the record here today the market quotation for Fox Film A stock on April 15, 1930, the date when those 300,000 stock purchase warrants were issued to Halsey Stuart & Co., was 43½; that on the 17th of April, 2 days later, the market quotation was 48. And on the next trading day, April 21, it went up to 53⅜, and ran as high during the balance of that month of April 1930 as 56, on April 25, or 10 days after those warrants were given to Halsey, Stuart & Co., which gave them the right to buy those shares at $35 a share. Does that accord with your recollection?

Mr. CLARKE. Yes; in general.

Mr. PECORA. Why was it considered necessary to give those bankers, Halsey, Stuart & Co., those 1-year notes at 97¾, with discount of two and one quarter from par value, and in addition give them the right to buy 300,000 shares of the stock of Fox Film, being the class A stock, at $35 a share, when they were selling in the market at about the same time and within 10 days thereafter for $56 a share?

Mr. CLARKE. I assume that Halsey, Stuart, and the other bankers who handled these things did not expect to make much profit on the spread in the sale of those notes, but rather figured they might make some profit out of this stock, and they had an opportunity to do so by having these warrants.

Mr. PECORA. In addition to getting the spread on the notes, they also were getting 6 percent on those notes, were they not?

Mr. CLARKE. Up to the time they sold them, I suppose.

Mr. PECORA. And if they wanted to hold the notes themselves, they were redeemable a year after at a premium, were they not?

Mr. CLARKE. No; I think they were payable at par.

Mr. PECORA. Let us see about that.

Senator COUZENS. Were these warrants for shares that were in the General Theatres Equipment Co.'s treasury?

Mr. CLARKE. No. This is Fox Film.

Senator COUZENS. I mean Fox Film.

Mr. CLARKE. Yes, sir.

Senator COUZENS. They were in the treasury?

Mr. CLARKE. Yes, sir.

Mr. PECORA. They were redeemable at 100½?

Mr. CLARKE. At maturity at 100½?

Mr. PECORA. Yes.

Mr. CLARKE. I think they were only payable at par.

Mr. PECORA. They were redeemable on the issuing date, April 15, at 100½.

Mr. CLARKE. Yes, sir.

Mr. PECORA. And thereafter redeemable up to January 15, 1931, at 100¼.

Mr. CLARKE. Yes.

Mr. PECORA. Thereafter, at maturity, which was April 15, 1931, they were redeemable at par.

Mr. CLARKE. Yes.

Mr. PECORA. In addition to getting that discount of more than 2 percent, they also got 6 percent interest, is that right?

Mr. CLARKE. Yes; the money was worth 6 percent, I assume.

Mr. PECORA. The money was worth 6 percent; and they also got these 300,000 stock purchase warrants, entitling them to buy the stock at $35 a share at a time when it was selling in the market for at least 7 or 8 points above that price, isn't that so?

Mr. CLARKE. Yes.

Mr. PECORA. Didn't they get something else?

Senator COUZENS (after a pause). What is the answer, Mr. Clarke?

Mr. CLARKE. I do not know.

Mr. PECORA. Didn't they also get 240,000 shares of Fox Film Corporation on April 18, 1930, at $30 a share?

Mr. CLARKE. Yes. I think they bought that stock, but not from Fox Film. I think that was purchased from General Theatres Equipment.

Mr. PECORA. General Theaters Equipment, which controlled Fox Film.

Mr. CLARKE. But it had nothing to do with this deal.

Mr. PECORA. What did that have to do with?

Mr. CLARKE. That had to do with the General Theatres having done its own financing to purchase 1,600,000 shares of Fox Film A stock at a price of 30 in order to raise the money to meet their obligations. They had contracted to sell some of the stock to relieve themselves of liabilities.

Mr. PECORA. You were the president of General Theatres Equipment, Inc., at that time, and you were also president of Fox Films?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Was not Fox Film in a position to have this financing with regard to the $5,000,000 done on better terms than those which Halsey, Stuart & Co. received?

Mr. CLARKE. I can only tell you that I did my best to make better terms for sometime, and those were the best terms I could make.

Mr. PECORA. Did you try any other banking groups or interests for better terms?

Mr. CLARKE. I talked with other bankers, but Halsey, Stuart & Co. had a preferential right to do the financing for Fox Film, and I really think that the deal was a very fair one.

Mr. PECORA. Fair to whom?

Mr. CLARKE. Fair to the stockholders of Fox Film.

Mr. PECORA. Do you seriously make that statement, Mr. Clarke?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Do you think that in order to enable it to borrow $55,000,000 for 1 year it was fair to the stockholders to have them discount that $55,000,000 by 2¼ percent, in addition to having 6 percent interest to pay on the $55,000,000, and in addition thereto, to give the bankers 300,000 option warrants, which entitled them to

buy, for $35 a share, 300,000 shares of Fox Film A stock at a time when that stock was selling in the market for $43 and more?

Mr. CLARKE. Not in those quantities could you have sold at that price, and I seriously believe, to reiterate, that the spread on the sale of the $55,000,000 notes was fair, for the reason that while I have no knowledge of what it cost, it probably did cost as much as that, or more, to distribute those notes, and, therefore, if that were true, the only profit the bankers might hope to make would be out of the options they held on the stock.

Senator COUZENS. How long did those options run?

Mr. PECORA. Three years.

Senator COUZENS. Any time within 3 years?

Mr. PECORA. Any time within 3 years. The expiration date was April 15, 1933.

Senator COUZENS. Why didn't they exercise them when the stock was so much above the option price?

Mr. CLARKE. Senator, I do not know. I have not the records. I only say this, that I believe that the market could not have absorbed anywhere near that amount of stock at those prices.

The CHAIRMAN. Were you connected with Fox Theatres, Mr. Clarke?

Mr. CLARKE. I was.

The CHAIRMAN. Were you president of it?

Mr. CLARKE. Yes.

The CHAIRMAN. And Fox Film also?

Mr. CLARKE. Yes, sir. General Theatres acquires 100,000 shares of the Fox Theatres B stock at the same time they bought the fifty thousand and odd shares from Mr. Fox of Fox Film.

Mr. PECORA. Do you recall the occasion for General Theatres Equipment, Inc., in May 1931, buying back 70,000 of those stock purchase warrants for a total consideration of $1,660,000? Do you recall it?

Mr. CLARKE. Yes; I do.

Mr. PECORA. What were those circumstances?

Senator GOLDSBOROUGH. $1,660,000?

Mr. PECORA. $1,660,000 for 70,000 of these 300,000 stock purchase warrants.

Mr. CLARKE. I should like to get those records. To the best of my recollection Blair & Co. had these warrants.

Mr. PECORA. That is, they had the 70,000 warrants?

Mr. CLARKE. They had the 70,000 warrants.

Mr. PECORA. They got them through Halsey, Stuart & Co., because they were associated with Halsey, Stuart & Co. in the financing of the $55,000,000 of debenture.

Mr. CLARKE. They were part of the syndicate formed by Halsey Stuart.

Mr. PECORA. Yes.

Mr. CLARKE. And they had 70,000 of these warrants, and threatened to sell them, and wanted to sell them, or exercise them and sell the stock, and it was thought advisable to keep them off the market at the time, and after consultation with the bankers w decided to buy them and did buy them.

Mr. PECORA. I know; but why was it considered advisable by General Theatres Equipment to buy them for $1,660,000?

Mr. CLARKE. General Theatres had put in about $63,000,000 into the Fox Film acquisition, in one way or another, and its principal asset was the Fox Film A stock and the Fox Film B stock, and it was very desirable that that be kept in a good position, inasmuch as it was the largest asset, by far, of General Theatres.

Mr. PECORA. But wherein did the necessity arise, in that situation, for General Theatres Equipment to buy back these 70,000 stock purchase warrants for upwards of $1,600,000?

Mr. CLARKE. Taking all the factors I have mentioned into consideration, it was thought that it was good business to buy them, and therefore they were purchased.

Mr. PECORA. Yes; but what were the reasons that entered into that consideration or decision?

Mr. CLARKE. On the basis of some of these prices you have quoted to me for Fox stock, we made a fair purchase, had we wanted to exercise the rights ourselves and sell the stock, but that was not done. After we acquired the warrants they were, I believe, later canceled.

Mr. PECORA. Let me refer you to page 249 of the minute book of General Theaters Equipment, Inc., relating to the minutes of the meeting of the board held on May 14, 1931, and to the following extract from the minutes appearing on that page [reading]:

> The chairman then stated that there had been paid to Bancamerica-Blair Corporation $1,660,000 for warrants to purchase 70,000 shares of class A stock of Fox Film Corporation which were acquired by Bancamerica-Blair Corporation in April 1930 as a part of the refinancing at that time. The chairman stated that the price paid for the warrants was on a parity with the market price of the class A stock of Fox Film Corporation at the time. Thereupon, upon motion duly made, seconded, and unanimously carried, it was—
>
> *Resolved*, That the action of the officers of this corporation in acquiring for $1,660,000, purchase warrants for 70,000 shares of class A stock of Fox Film Corporation from Bancamerica-Blair Corporation be, and the same hereby is in all respects ratified, approved, and confirmed.

Now, you were the chairman at that time, were you not?

Mr. CLARKE. I do not think so. I believe I was away at the time.

Mr. PECORA. Evidently Mr. W. C. Michel acted as chairman.

Mr. CLARKE. Correct.

Mr. PECORA. Apparently the deal had already been consummated prior to the date of this meeting of the board of directors of General Theaters Equipment, had it not?

Mr. CLARKE. It is a confirmation of the deal; yes.

Mr. PECORA. After the money had been paid, that is, the $1,660,000 had been paid, to Bancamerica-Blair Corporation, it was reported to the directors and they ratified it.

Mr. CLARKE. Yes; that is correct.

Mr. PECORA. Why was the plan not first submitted to the board of directors and authorized by them before being consummated?

Mr. CLARKE. It was, orally.

Mr. PECORA. Orally?

Mr. CLARKE. Yes, sir; by me. I telephoned, I think, all the directors.

Mr. Pecora. You telephoned the directors?

Mr. Clarke. I think I did; yes, sir. In fact, I know I did.

Mr. Pecora. Wasn't it a matter of sufficient importance to be made the subject of a definite, formal action which would appear on the minutes of the board of directors?

Mr. Clarke. It was.

Mr. Pecora. Where?

Mr. Clarke. You just read it.

Mr. Pecora. I read the action taken by way of ratification of the consummated deal.

Mr. Clarke. That is right.

Mr. Pecora. Not action taken authorizing the deal to be made. You notice the difference, do you not?

Mr. Clarke. There is a difference, but the result was the same in this case as if it had been possible to have held a meeting before the money was paid.

Mr. Pecora. Was there any hurry about rushing this transaction and consummating it before you could get the formal authority of the board of directors?

Mr. Clarke. Yes.

Mr. Pecora. What was the reason for that hurry?

Mr. Clarke. We did not want these options exercised and the stock put on the market.

Mr. Pecora. Had Bancamerica-Blair Corporation indicated to you that they were going to exercise their purchase warrants?

Mr. Clarke. They had said they would.

Mr. Pecora. What difference would it have made to General Theaters Equipment if they had sold, at $35 a share 70,000 shares of the Fox Film A stock, instead of paying Bancamerica-Blair Corporation $1,660,000 for those purchase warrants?

Mr. Clarke. General Theaters management at that time believed that Fox Film A stock would be worth $75 to $100 a share very shortly. It controlled at that time something over 1,000,000 shares of stock in the Fox Film, and it was desirous of not having any more stock outstanding than possible.

Mr. Pecora. Let us see. The chairman at this meeting stated that the prices, paid for the warrants; namely, this $1,660,000; was on a parity with the market price of the class A stock of the Fox Film Corporation at the time this transaction was consummated.

Mr. Clarke. Yes, sir.

Mr. Pecora. So that there would have been no loss, would there, had the option warrants been exercised by Bancamerica-Blair Corporation, if the sum that they received for the option warrants was on a parity with the market price of the stock?

Mr. Clarke. There would have been no loss in that sense, but my statement, I believe, was meant to convey something else, that we did not care to have that additional stock outstanding. We preferred to have our interest remain intact, without additional stock put out.

The Chairman. The Committee will stand adjourned until tomorrow morning at 10:30.

(Whereupon, at 4:30 p. m., an adjournment was taken until tomorrow, Thursday, Nov. 23, 1933, at 10:30 a.m.)

COMMITTEE EXHIBIT No. 160—WEDNESDAY, NOVEMBER 22, 1933

$30,000,000 General Theatres Equipment, Inc., Ten-Year 6% Convertible Gold Debentures Dated April 1, 1930, Due April 1, 1940

Purchase Group:		
Purchased $30,000,000 above Debentures at 90		$27, 000, 000. 00
Sold $30,000,000 above Debentures to Selling Group at 96½		28, 950, 000. 00
Represents 6½% gross profit		$1, 950, 000. 00
Special Concession of 1% to the following:		
Tucker, Hunter, Dulin & Co., San Francisco on $1,500,000	$15, 000. 00	
Folds, Buck & Co., Chicago on $1,500,000	15, 000. 00	
Expenses chargeable to this Group	113, 924. 90	
		143, 924. 90
Net profit distributed to the following on May 21, 1930 (6.02%)		$1, 806, 075. 10

Members	Interests	Profit
Chase Securities Corporation	24%	$433, 458. 02
Pynchon & Co	24%	433, 458. 02
Halsey, Stuart & Co., Inc	20%	361, 215. 02
West & Co	16%	288, 972. 02
W. S. Hammons & Co	16%	288, 972. 02
Total	100%	$1, 806, 075. 10

Selling Group:			
Purchased $30,000,000 Debentures from Purchase Group at 96½			$28, 950, 000. 00
Delivered $30,000,000 Debentures to Members at 99½			29, 850, 000. 00
Represents 3% Selling Concession			$900, 000. 00
Trading Account charged with—			
3% on $285,000 Debentures oversold		$8, 550. 00	
1% on $2,735,000 Debentures sold to the principals		27, 350. 00	
		$35, 900. 00	
Trading Account credited with:			
On cancellations of 1% on $35,000 Debentures	$350. 00		
On cancellations of 3% on $532,000 Debentures	15, 960. 00		
		16, 310. 00	
			19, 590. 00
			$919, 590. 00
Expense Account credited with ¼% on $29,753,000 Debentures		$74, 382. 50	
Distributed to Members on May 19, 1930:			
1% on $2,700,000 Debentures	$27, 000. 00		
2¾% on $29,753,000 Debentures	818, 207. 50		
		845, 207. 50	
			919, 590. 00

EXPENSES

Loss in Trading Account (as above)			$125,053.75
Trading Account to be charged with		$35,900.00	
Trading Account to be credited with		16,310.00	
			19,590.00
			$144,643.75
Loss in Trading Account			4,121.90
Total loss in Trading Account (based on taking over shortage at 105)			$148,765.65
Profits in regular Interest Account		$1,900.05	
Expenses:			
Advertising		30,199.57	
Postage and Insurance		462.43	
Rushmore, Bisbee & Stern (Instructions Dodge)			
Chase Bank			
Chase Securities	$7,307.70		
Pynchon & Co	1,020.74		
Halsey, Stuart & Co	1,038.64		
West & Co	262.72		
W. S. Hammons	1,150.00		
		10,779.80	
			39,541.75
Total Expense			$188,307.40
Chargeable as follows:			
To Selling Group—¼% on $29,753,000		$74,382.50	
To Purchase Group		113,924.90	
			188,307.40

MAY 21, 1930.

COMMITTEE EXHIBIT NO. 164—WEDNESDAY, NOVEMBER 22, 1933

The following is a summary as of October 1, 1933, of the status of the interests of the Chase National Bank in Fox Film Corporation and General Theatres Equipment, Inc., and related companies:

CHASE NATIONAL BANK

	Par	Cost or amount	Reserves or write-offs	Now carried at—
A. Investments and loans				
Fox Film Corporation:				
Contingent Obligation	$693,000.00	$693,000.00	----------------	$693,000.00
Class A Common Stock (no par)	[1] 1,749,507.00	29,118,639.82	$19,082,076.70	10,036,563.12
		29,811,639.82		10,729,563.12
Wesco Corporation:				
Two-Year Notes	15,000,000.00	14,400,000.00	} 14,432,300.00	----------------
Direct Bank Loans	32,300.00	32,300.00		
Subsidiary Bank Loans	4,390,000.00	4,390,000.00	----------------	4,390,000.00
	19,422,300.00	18,822,300.00		
General Theatres Equipment, Inc.:				
Bank Loans	19,700,000.00	19,700,000.00	19,700,000.00	----------------
Receiver's Certificates	251,903.33	251,903.33	----------------	251,903.33
Ten-Year Convertible Debentures	1,678,000.00	1,423,881.25	1,400,000.00	23,881.25
	21,629,903.33	21,375,784.58	----------------	----------------
Film Securities Corporation: 2-Year notes	[2] 4,570,240.50	4,352,994.46	----------------	4,352,994.46
Totals	46,315,443.83	74,362,718.86	54,614,376.70	19,748,342.16
B. G.T.E. Stock Syndicate Loans				
Loan to G.T.E. Pfd. Stk. Syndicate 11/11/30 [3]		1,468,661.01	----------------	1,468,661.01
Loan to G.T.E. Orign. Grp. Pfd. Stk. Synd. 11/28/30 [3]		623,484.83	----------------	623,484.83
Loan to G.T.E. Orign. Grp. Trad. Acct. 5/3/30		896,211.97	896,211.97	----------------
Totals		2,988,357.81	896,211.97	2,092,145.84
Grand totals		77,351,076.67	55,510,588.67	21,840,488.00

[1] Received for $31,683,600.00 face amount of debentures and bank loans.
[2] Original face amount $5,003,000.00.
[3] Payment is guaranteed by Chase Securities, which has set up full reserves.

The following is a summary as of October 1, 1933, of the status of the interests of the Chase Securities Corporation, now Chase Corporation (including Chase Harris Forbes Corporation) in Fox Film Corporation and General Theatres Equipment, Inc. and related companies:

Chase Securities Corporation, now Chase Corporation

A. INVESTMENTS

	Par	Cost	Write-offs or reserves	Now carried at
Fox Film Corporation: Class A Common Stock (no par)	824 shs.	$10,373.60	$849.10	$9,524.50
Wesco Corporation				
Film Securities Corporation [1]				
General Theaters Equipment, Inc.:				
Ten-Year Convertible Debentures	866,500	748,884.01	748,884.01	
Ten-Year Convertible Debentures in Trading Account [2]	1,057,000	936,784.70	936,784.70	
Total	1,923,500	1,696,042.31	1,686,517.81	9,524.50

[1] $7,125 has been paid for share of common stock.
[2] $1,939,000 debentures are in this account at a cost of $1,718,472.59. After deducting Halsey, Stuart & Co.'s liability for $882,000 of debentures at a cost of $781,687.89, the interest of Chase Securities is as above stated.

B. G.T.E. STOCK SYNDICATE LOANS AND LIABILITIES

	Amount	Write-offs or reserves	Now carried at
Direct participations in Syndicates [1]	$3,021,302.98	$3,021,302.98	
Payments on Preferred Stock Syndicate Loans	6,531,529.64	6,531,529.64	
Reserves for Preferred Stock Syndicate	[2] 2,092,145.84	2,092,145.84	
Advances to Pynchon & Co., West & Co., and Hammons & Co. in Conversion Account	730,095.50	730,095.50	
Total	12,375,073.96	12,375,073.96	
Grand total	14,071,116.27	14,061,591.77	$9,524.50

[1] Now represented by v.t.cs. for 48,537⅜ shares of Preferred Stock and 1,136 shares of Common Stock of General Theatres Equipment, Inc.
[2] This item for which a full reserve has been set up is the balance still due to Chase National Bank on account of G.T.E. stock syndicate loans, the payment of which is guaranteed in full by the Chase Corporation to the bank and which items are consequently carried at full value by the bank. In a consolidation of the total loans and investments of both the bank and the corporation this item of $2,092,145.84 should appear only once.

Recapitulation of interests of Chase National Bank and Chase Securities Corporation (now Chase Corporation) in Fox Film and General Theatres Equipment, Inc., and related companies

	Total cost or amount	Total reserves or write-offs	Total now carried at—
Chase National Bank	$77,351,076.67	$55,510,588.67	$21,840,488.00
Less sum due from Chase Securities Corporation (now Chase Corporation) on account of its guaranty of G.T.E. Stock Syndicate Loans and which has been fully reserved for by Chase Corporation as shown on Chase Corporation schedule under Reserves for Preferred Stock Syndicate	2,092,145.84		2,092,145.84
	75,258,930.83	55,510,588.67	19,748,342.16
Chase Securities Corporation (now Chase Corporation)	14,071,116.27	14,061,591.77	9,524.50
Consolidated total	89,330,047.10	69,572,180.44	19,757,866.66